

Supreme Court of the United States

OCTOBER TERM, 1951

No. 56

JAMES W. OYLER, PETITIONER

vs.

OTTO C. BOLES, WARDEN

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

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Original Print

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State of West Virginia

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[fol. 1]

**IN THE
CIRCUIT COURT OF TAYLOR COUNTY
STATE OF WEST VIRGINIA**

INDICTMENT

**In the Circuit Court of said Taylor County, January
Term, 1953.**

THE GRAND JURORS of the State of West Virginia, in and for the body of the County of Taylor, and now attending the said Court, upon their oaths present that James William Oyler, on the day of November, 1952 and within one year preceding this finding, in the said County of Taylor, did feloniously, wilfully, maliciously, deliberately and unlawfully, slay, kill and murder one Virgil Dale Denison.

against the peace and dignity of the State.

Found upon the testimony of G. F. Randall and other witnesses duly sworn in open Court to testify the truth and sent before the Grand Jury, this the day of January, 1953.

Richard B. Bord, Prosecuting Attorney.

[fol. 1A]

January Term, 1953

No. 5349

STATE OF WEST VIRGINIA

vs.

JAMES WILLIAM OYLER

INDICTMENT FOR A FELONY

A TRUE BILL

Creed Ross

Foreman of the Grand Jury

Attest:

Richard B. Bord

Prosecuting Attorney of

Taylor County, West Virginia

**We, the Jury find the defendant, James William Oyler,
Guilty of Murder in the Second Degree as charged in
the Indictment herein.**

Charles M. Cutright

Foreman

[fol. 2]

**IN THE
CIRCUIT COURT OF TAYLOR COUNTY****STATE OF WEST VIRGINIA, County of Taylor to-wit:****Felony No. 5249****STATE OF WEST VIRGINIA****VS.****JAMES WILLIAM OYLER****ARRAIGNMENT—January 23, 1953**

This day came the State by its Prosecuting Attorney, as well as the defendant James William Oyler, in person and in custody of the Sheriff and sat at the Bar of the Court, and thereupon the Court at the request of the defendant, appointed Attorney Wm. T. George, Sr., counsel to assist him in his defense. And the defendant being duly arraigned upon the indictment herein for plea in his behalf says he is not guilty in the manner and form as therein charged, and puts himself upon the Country and the State doth the like, and issue being thereon joined. And on motion of the State this case is set for trial on February 4, 1953.

W. Merle Watkins
Judge

Attest: /s/ W. Merle Bailey
Clerk of the Circuit Court
of Taylor County, Granton
West Virginia.

[fol. 3] **IN THE
CIRCUIT COURT OF TAYLOR COUNTY**

STATE OF WEST VIRGINIA, County of Taylor to-wit:

COURT SAT PURSUANT TO ITS ADJOURNMENT ON TUESDAY.

**PRESENT: THE HONORABLE W. MERLE WATKINS, JUDGE OF
THE CIRCUIT COURT OF TAYLOR COUNTY.**

[Title omitted]

TRIAL ORDER—February 4, 1953

This day came the State by its Prosecuting Attorney, as well as the defendant, James William Oyler, in person and in custody of the Sheriff, and sat at the Bar of the Court and was assisted by counsel.

And thereupon came a jury to-wit: George E. Conaway, Donzel B. Hartley, Franklin J. Stilwell, Charles O. Grimm, Charles J. Sorbello, Carl W. Keller, Leon D. Bullough, Kenneth W. Barcus, Wilbert A. Moore, Samuel J. Gerard, Jr., John W. Pitzer and Charles M. Cutright, all good and lawful ment who were selected, tried and sworn according to law to try the issues joined.

And thereupon the Jury was not interrrogated upon their voir dire as to their having conscientious scruples against inflicting the death penalty as the State announced by her prosecuting attorney that the death penalty would not be demanded.

And the Jury having heard all the evidence adduced and time for adjournment having arrived the Court instructed the Jury not to discuss this case amont themselves, nor to permit any one to discuss this case with them nor in their presence, and they were thereupon placed in the care and custody of the Sheriff who was instructed to keep them together and return them into Court on tomorrow morning at nine O'clock.

It is ordered that Court do now adjourn until Wednesday morning at nine o'clock.

**W. Merle Watkins
Judge.**

[fol. 4] **IN THE**
CIRCUIT COURT OF TAYLOR COUNTY

[Title omitted]

INSTRUCTIONS OFFERED ON BEHALF OF THE
PLAINTIFF

STATE'S INSTRUCTION No. 1

The court instructs the jury that one of five verdicts may be found under the indictment in this case, if the evidence in the case so warrant:

1. Murder in the first degree.
2. Murder in the second degree.
3. Voluntary manslaughter.
4. Involuntary manslaughter.
5. Not guilty.

The court further instructs the jury that murder in the first degree is when one person kills another person unlawfully, wilfully, maliciously, deliberately and pre-meditatedly; that murder in the second degree is when one person kills another person unlawfully and maliciously, but not deliberately; that voluntary manslaughter is when one person, with intent to kill, unlawfully kills another person without malice, but under sudden excitement and heat of passion; that involuntary manslaughter is where one person while engaged in an unlawful act, unintentionally causes the death of another person, or when engaged in a lawful act by wanton or callous negligence negligently causes the death of another person.

The court further instructs the jury that murder in the first degree is punishable by death, or confinement in the penitentiary of this state for life, as the jury shall find in their verdict but the death penalty has been waived in this case; that murder in the second degree is punishable by confinement in the penitentiary of this state not less than five nor more than eighteen years; that voluntary manslaughter is punishable by confinement in the penitentiary of this state not less than one nor more than five years; that involuntary manslaughter is a mis-

demeanor and punishable by imprisonment in the county jail or fine or by both, in the discretion of the court.

Given

W. Merle Watkins
Judge

.

[fol. 5] STATE'S INSTRUCTION No. 2

The jury are instructed that a mortal wound given with a deadly weapon in the previous possession of the slayer without any or upon very slight provocation, is prima facie wilful, deliberate, and premeditated killing and throws upon the accused the necessity of proving extenuating circumstances, and unless he proves such extenuating circumstances, or the circumstances appear from the case made by the state, he is guilty of murder in the first degree.

State v. Donahue, 79 W. Va. 263, 90 S. E. 834
State v. Dickey, 46 W. Va. 319, 33 S. E. 231

Given

W. Merle Watkins
Judge

.

[fol. 6] STATE'S INSTRUCTION No. 3

The court tells the jury that words, however grievous, cannot justify taking life, nor will they reduce the grade of homicide below murder or excuse the same.

McCoy v. Com., 133 Va. 736, 112 S. E. 704
State v. Stewart, 63 W. Va. 600, 60 S. E. 591.

Refused

W. Merle Watkins
Judge

.

[fol. 7] STATE'S INSTRUCTION No. 4

The court instructs the jury that one is not justified in taking the life of another merely because such other has threatened him or used vile epithets towards him, no matter how strong the same may be, there must at the

time of the killing have been an attempt consisting of some overt act or demonstration such as would induce a reasonable apprehension of imminent danger and although they may believe from the evidence that the deceased, Virgil Dale Denison, had recently before his death, made certain threats against the prisoner, the prisoner cannot be excused for killing said Denison, on the ground of self-defense, unless it be shown to the jury by a preponderance of the evidence produced by the state and by the defendant that at the time the prisoner shot Denison, he (Denison) was making such an advance or attack on the prisoner, as the prisoner believed and had reason to believe indicated a purpose on the part of said Denison to take the prisoner's life, or to do him some great bodily harm and that there was reasonable ground for the prisoner to apprehend death or great bodily harm, and reason for him to believe that he could only escape death or such great bodily harm by killing said Denison.

State v. Laura 93 W. Va. 250, 116 S.E. 251.

Given

W. Merle Watkins
Judge

. . . .

[fol. 8]

STATE'S INSTRUCTION No. 5

The court instructs the jury that, although the burden is upon the State to prove the prisoner guilty beyond a reasonable doubt, yet such a doubt is not a mere vague, fanciful or imaginary doubt, but it must be a good and substantial doubt based upon the evidence, or lack of evidence in the case, and one for which he who entertains it should be able to give a good and substantial reason, based upon the evidence or lack of evidence in the case.

State v. Stafford, 89 W. Va. 301, 109 S.E. 326.

State v. Abbott 64 W. Va. 413, 62 S.E. 693.

Given

W. Merle Watkins
Judge

8
[fol. 9]

STATE'S INSTRUCTION No. 6

The Court instructs the jury that where an unlawful homicide is proved, the presumption is that it is murder in the second degree, and the burden is on the state to show that it is murder in the first degree; and upon the accused to show that it was without malice, and is, therefore, only manslaughter, or that he acted lawfully and is therefore not guilty, and in arriving at a verdict in this case, as to the degree of guilt, if any, the jury should take into consideration all the evidence, both for the state and defense.

State v. White, 81 W. Va. 518, 94 S. E. 972

State v. Trail, 59 W. Va. 179, 53 S. E. 17

State v. Michael, 74 W. Va. 620, 82 S. E. 611.

Given

W. Merle Watkins
Judge

[fol. 10]

STATE'S INSTRUCTION No. 7

The court instructs the jury that malice in the law of murder, does not mean mere spite, ill will or dislike as it is ordinarily understood, but it means that condition of the mind which prompts one person to take the life of another without just cause or provocation, and it signifies a state of disposition which shows a heart regardless of social duty and fatally bent on mischief, and the court instructs the jury that malice, express or implied, is an essential element of murder in the first or second degree.

Taken from the record in,

State v. Wilson 95 W. Va. 525, 121 S. E. 729.

State v. Hurst, 93 W. Va. 222, 116 S. E. 248, syl. 2.

Given

W. Merle Watkins
Judge

[fol. 11]

STATE'S INSTRUCTION 8

The court instructs the jury that in arriving at a verdict in this case you are the sole and exclusive judges of the evidence and the weight and credibility to be given to the evidence of each and every witness who has testified before you, and you should give to the testimony of any witness or witnesses such weight as in your opinion the same is entitled to under all the circumstances of the case, and in determining the weight to be given the testimony of the witnesses who have testified in this case you may take into consideration the reasonableness or unreasonableness of their testimony, their opportunity to see and hear what they have testified to, their bias or prejudice and interest in the case, if any appear, their fairness, frankness and apparent intelligence, contradictory statements made by them, if any, whether under oath or otherwise, their demeanor upon the witness stand, and from all these and other facts and circumstances appearing in the case, give to the evidence of each and every witness such weight and credit as the jury may believe the same is entitled to.

State v. Snyder

State v. Stafford 89 W. Va. 301: 109 S. E. 326.

Given

W. Merle Watkins
Judge

[fol. 12]

IN THE
CIRCUIT COURT OF TAYLOR COUNTY

• • • • •
INSTRUCTIONS OFFERED ON BEHALF OF THE
DEFENDANT

INSTRUCTION No. 1

The court instructs the jury that no presumption of guilt can arise against the defendant because of the indictment having been found against him by a Grand Jury of Taylor County.

Given

W. Merle Watkins
Judge

INSTRUCTION No. 2

The court instructs the jury that the defendant is by law presumed to be innocent of the crime charged against him in the indictment herein and that the burden is upon the State before any conviction can be lawfully had to establish the guilt of the defendant by competent testimony beyond all reasonable doubt, and this presumption of innocence to which the defendant is entitled upon this trial is not an idle ceremony to be disregarded by the jury at its pleasure, but it is a substantial part of the law in this case, and it is the duty of the jury to give the defendant the full benefit of this presumption of innocence and to acquit him unless they feel compelled to convict him because the evidence of his guilt has been established beyond all reasonable doubt.

Given

W. Merle Watkins
Judge

[fol. 13]

• • • • •
INSTRUCTION No. 3

The court further instructs the jury that in this trial the defendant has set up for the justification of the shooting and killing of the deceased the plea of self-defense which if proven to the satisfaction of the jury will justify the jury in finding the defendant not guilty of any offense

under the indictment upon which the defendant is now being tried.

And the court further instructs the jury that if they believe from the evidence, facts and circumstances proven herein that before the defendant fired the shot that disabled and killed the deceased that the deceased had assaulted the mother of the defendant and struck her one or more blows and caused her to cry out for help, and if you further believe that the mother of said defendant was by one of said blows knocked unconscious and that immediately following such assault by the deceased upon the mother of the defendant that the deceased went into the private room then occupied by the defendant, and was then and there armed with a dangerous and deadly weapon, commonly known as a poker, and thereupon cursed and abused the defendant and threatened then and there to kill said defendant, that under such circumstances the defendant would have a right in law to defend himself against such threatened attack if the danger then appeared imminent to the said defendant, and that if said defendant then and there believed that he was in immediate danger of great bodily injury or death at the hands of the deceased, and that said danger was imminent, then the defendant then had a right to fire the shot from a rifle into the body of the deceased and to kill him [fol. 14] if it were necessary in order to protect himself from great bodily harm or death at the hands of the assailant, and the jury must judge the conduct of the defendant at the time he was assaulted, as aforesaid, from the standpoint of the defendant and if the jury believe from the evidence, facts and circumstances proven that the defendant has established his plea of self-defense, or if the jury believe from such evidence, facts and circumstances that there remains in the minds of the jury a reasonable doubt as to whether or not he has sustained said plea of self-defense, the jury shall find defendant not guilty of any offense under the indictment herein but of all the evidence, facts and circumstances in this case the jury must judge.

Given

W. Merle Watkins
Judge

[fol. 16]

IN THE
CIRCUIT COURT OF TAYLOR COUNTY

Felony No. 5349

STATE OF WEST VIRGINIA

VR.

JAMES WILLIAM OYLER

INFORMATION—February 13, 1953

The State of West Virginia by Richard B. Bord, Prosecuting Attorney, respectfully represents that the above named defendant was on the 5th day of February, 1953, at the January Term of the Circuit Court, found guilty of Second Degree Murder, as charged in the indictment, found and returned by the Taylor County Grand Jury on the 12th day of January, 1953.

Your petitioner further respectfully represents that he is informed and, therefore, charges the fact to be that the said James William Oyler was indicted by the Commonwealth of Pennsylvania, in the Court of Quarter Sessions of the Peace for the County of Bedford, on the 26th day of May, 1950, for the theft of a motor vehicle, of the value of \$1250.00, that subsequent thereto, to-wit, on the 1st day of May, 1950, the said defendant, James William Oyler, pleaded guilty, as charged in the indictment, and on the day aforesaid, was sentenced by the Court of Common Pleas of Bedford County, Pennsylvania, said sentence being that said defendant pay a fine of \$100.00 for the use of Bedford County; that he make such restitution as determined by the Probation Officer and that he be placed on probation for a period of five years.

Your petitioner further charges the fact to be that the said James William Oyler, on the 31st day of December, 1950, was indicted by the Commonwealth of Pennsylvania in the Court of Quarter Sessions of the Peace for the County of Bedford, of feloniously entering a drug store in the County and Commonwealth aforesaid with intent to and did thereupon commit grand larceny, which

charge was a felony charge of burglary in the said Commonwealth of Pennsylvania, and that subsequent thereto, to-wit, on the 5th day of February, 1961, the said James William Oyer, pleaded guilty to the aforementioned indictment and thereupon was sentenced by the Court of [Vol. 17] Quarter Sessions of Bedford County, Pennsylvania, to be fined the sum of \$25.00 and to be committed to the Pennsylvania Industrial School at Camp Hill.

Your petitioner further represents that the Commonwealth of Pennsylvania in the Court of Quarter Sessions of the Peace for the County of Bedford at the February Sessions, 1961, did indict the said James William Oyer on the charge of burglary, being a felony in said State, and that thereafter, on the 5th day of February, 1961, the said James William Oyer entered a plea of guilty to the aforementioned indictment and thereupon was ordered to pay a fine of \$25.00 for the use of Bedford County, and to be committed to the Pennsylvania Industrial School at Camp Hill.

Your petitioner further tenders and makes a part of his said information duly certified copies of the indictment and orders, above mentioned, and further tenders and makes a part of his said information, the probation and parole records of James William Oyer from the Commonwealth of Pennsylvania relative to the above charges.

Your petitioner, therefore, represents unto the Court that the said James William Oyer has been three times formally convicted of a felony in the Commonwealth of Pennsylvania, being punishable a sentence in the penitentiary and is, therefore, a habitual criminal under Chapter 61, Article 11, Section 18, and ought to be confined in the Penitentiary of the State of West Virginia for the rest of his natural life.

Richard B. Bord
Petitioner

STATE OF WEST VIRGINIA,

COUNTY OF TAYLOR, to-wit:

Richard B. Bord, Prosecuting Attorney of Taylor County, State of West Virginia, the petitioner named in the foregoing petition, being first duly sworn, deposes and says, that the facts and allegations contained therein are true, except so far as they are therein stated to be [fol. 18] on information, and belief, and insofar as they are therein stated to be upon information and belief, he believes them to be true.

Richard B. Bord

Taken, sworn to and subscribed before me this 13 day of February, 1953.

**Edna M. Defenbaugh
Notary Public.**

**My Commission Expires:
January 27, 1959**

[fel. 19] **IN THE
COURT OF QUARTER SESSIONS OF THE PEACE
FOR THE COUNTY OF BEDFORD**

Of No. 28, May Sessions, A. D. 1950

County of Bedford, ss.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Bedford, upon their oaths and affirmations, respectively, do present that James William Oyler late of the County aforesaid, on the 7th day of April in the year of our Lord one thousand nine hundred fifty, at the of in the County aforesaid, and within the jurisdiction of this Court, with force and arms, did unlawfully, maliciously and feloniously take, steal and drive away from a public highway in the Borough of Bedford, County of Bedford and Commonwealth of Pennsylvania a certain motor vehicle of the approximate value of \$1250.00 in United States currency and being the property of Frederick B. Tenor, Bedford, Pennsylvania.

contrary to the form of the Act of General Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

/s/ Charles M. Keen
District Attorney.

[fel. 20] Before pleading to the within indictment I was advised by the Court that if I were unable to retain counsel the Court would appoint counsel to represent me without cost to myself, and being asked if I desired counsel so appointed replied that I did not.

/s/ James W. Oyler

No. 26, May Sessions, 1950

COMMONWEALTH

versus

JAMES WILLIAM OYLER

INDICTMENT

Offense: Larceny (Felony) 18 P.S. 4807

Elmer L. Landis, Prosecutor

P.S.P.

Foreman

And now, to-wit, the 1st day of May A.D. 1950 the
Defendant pleads guilty and waives indictment.

/s/ James William Oyler

WITNESSES:

[fol. 21]

**IN THE
COURT OF COMMON PLEAS OF BEDFORD
COUNTY, PENNSYLVANIA**

No. 26, May Sessions, 1960

COMMONWEALTH

vs.

JAMES WILLIAM OYLER

Costs: Fine: \$100.00

Charge: Larceny.

ORDER OF COURT

Now May 1, 1960, in No. 26 May Sessions, 1950, the sentence of the Court is that the defendant, James William Oyler, pay the costs; that he pay a fine of \$100.00 for the use of Bedford County; that he make such restitution as determined by the Probation Officer and he is placed on probation for a period of five years.

Per Curiam,

/s/ J. Colvin Wright, P.J.

[fol. 23] No. 25, February Sessions, 1951

COMMONWEALTH

versus

JAMES WILLIAM OYLER

INDICTMENT

Offense: Burglary

Foster M. Ott, Prosecutor

P.S.P.

Foreman

And now, to-wit, the 5th day of February A. D. 1951,
the Defendant pleads guilty and waives indictment.

/s/ James William Oyler

WITNESSES:

[fol. 24] IN THE
COURT OF QUARTER SESSIONS OF BEDFORD
COUNTY, PENNSYLVANIA

No. 25, February Sessions, 1951

COMMONWEALTH

VB.

JAMES WILLIAM OYLER

Costs: **Fine: \$25.00**

Charge: Burglary

ORDER OF COURT

Now, February 5, 1951, in No. 25, February Sessions, 1951, the sentence of the Court is that the defendant, James William Oyler, pay the costs; that he pay a fine of \$25.00 for the use of Bedford County; that he make such restitution as determined by the Probation Officer; and that he be committed to the Pennsylvania Industrial School at Camp Hill.

Per Curiam,

/s/ J. Colvin Wright, P. J.

Of No. 26, Feb. Sessions, A. D. 1951

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Bedford, upon their oaths and affirmations, respectively, do present that James William Oyler late of the County aforesaid, on the 31st day of December in the year of our Lord one thousand nine hundred fifty, at the _____ of _____ in the County aforesaid, and within the jurisdiction of this Court, with force and arms, did then and there feloniously, wilfully and maliciously enter into the drug store of Ellery Ellazer Higgon in Napier Township, Bedford County, Pennsylvania, and defendant did then and there feloniously take, steal and carry away from said building \$50.00 in United States currency, and being the property of Ellery Ellazer Higgon.

contrary to the form of the Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

/s/ Charles M. Koontz
District Attorney.

[fol. 26] , No. 26, February Sessions, 1951

COMMONWEALTH {

VERSUS

JAMES WILLIAM OYLER

INDICTMENT

Offense: Burglary

Harry W. Rook, Prosecutor

P.S.P.

Foreman

And now, to-wit, the 5th day of February A. D. 1951
the Defendant pleads guilty and waives indictment.

/s/ James William Oyler

WITNESSES:

[fol. 27] IN THE
COURT OF QUARTER SESSIONS OF BEDFORD
COUNTY, PENNSYLVANIA

No. 26, February Sessions, 1951

COMMONWEALTH

VS.

JAMES WILLIAM OYLER

Costs: Fine: \$25.00

Charge: Burglary

ORDER OF COURT

February 5, 1951, in No. 26, February Sessions, 1951, the sentence of the Court is that the defendant, James William Oyler, pay the costs; that he pay a fine of \$25.00 for the use of Bedford County; that he make such restitution as determined by the Probation Officer; and that he be committed to the Pennsylvania Industrial School at Camp Hill.

Per Curiam,

/s/ J. Colvin Wright, P. J.

[fol. 28]

COMMONWEALTH OF PENNSYLVANIA) ss:
COUNTY OF BEDFORD)

(SEAL) I, Howard J. Koontz, Clerk of the Court of Quarter Sessions in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the Indictments and Orders of Court of the cases therein stated wherein Commonwealth of Pennsylvania Plaintiff, and James William Oyler Defendant, so full and entire as the same remains of record before the said Court at No. 26, Nos. 25 and 26 of May, February Sessions, A. D. 1950, 1951.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 9th day of February A. D. 1953.

Howard J. Koontz
Clerk of the Courts

I, J. Colvin Wright, President Judge of the 57th Judicial District, composed of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace, do certify that Howard J. Koontz by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Quarter Sessions of said County, was at the time of so doing and now is Clerk Q.S. in and for said County of Bedford, in the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

J. Colvin Wright
President Judge

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF BEDFORD) ss:

I, Howard J. Koontz, Clerk of the Court of Quarter Sessions in and for said County, do certify that the Honorable J. Colvin Wright by whom the foregoing attestation was made, and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace in and for said County, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 9th day of February A. D. 1953.

(SEAL)

Howard J. Koontz
Clerk of the Courts

A true copy:

[fol. 29]

PENNSYLVANIA INDUSTRIAL SCHOOL
CAMP HILL

Certificate No. 2207-7772

CERTIFICATE OF ADVANCEMENT
CITIZEN-FIRST CLASS

To all who shall see these presents, greeting:

THIS IS TO CERTIFY THAT Citizen James W. Oyler, having creditably fulfilled his obligations to the Administration of the Pennsylvania Industrial School, has been promoted to Citizen-First Class in recognition of this achievement.

This promotion entitles him to all the privileges of the School accorded to First Classmen.

In accepting and signing this Certificate, he enters into an agreement with the Superintendent, to maintain his excellent record and not to leave the premises of the School without proper authorization.

(SEAL) Signed this 27th day of October, 1951, in the presence of the Superintendent of the Pennsylvania Industrial School at Camp Hill.

James W. Oyler
CITIZEN-FIRST CLASS

Arthur T. Prasse
ARTHUR T. PRASSE, Superintendent

[fol. 30] IN THE
CIRCUIT COURT OF TAYLOR COUNTY

**MOTION TO SET ASIDE VERDICT AND TO GRANT A
NEW TRIAL**

Grounds assigned by counsel for defendant for setting aside the verdict of the jury in this case.

To the Honorable W. Merle Watkins, Judge:

The defendant, James William Oy'ler, by counsel, assigned the following grounds of error for his prejudice upon his motion to set aside the verdict of the jury and grant him a new trial.

(1) The evidence of the verdict is contrary to the law and the evidence in this case.

(2) The State ought to prove that a certain bullet which was taken from the body of the deceased had been found from the 22-Calibre Rifle of the defendant, but failed to identify the bullet which was alleged to have been taken from the body of the deceased was a bullet fired from the gun of the defendant.

(3) For misconduct of the jury in calling into their conference and conferring with the Sheriff of Taylor County upon the kind of verdict that they should render after the case had been submitted to them for decision.

(4) For other errors appearing on the face of the record the verdict should be set aside and a new trial awarded.

Respectfully submitted,

Wm. T. George
Attorney for Defendant.

[fol. 31] **IN THE
CIRCUIT COURT OF TAYLOR COUNTY**

.

ORDER OF COMMITMENT—February 11, 1953

This day came the State by her Prosecuting Attorney as well as the Defendant James William Oyler in person and in custody of the Sheriff and sat at the Bar of the Court and was represented by William T. George, Sr., Esq., his Counsel, and thereupon the Defendant, by Counsel, tendered and asked leave to file his memorandum in writing assigning grounds in support of his motion heretofore made to set aside the verdict of the Jury herein and grant him a new trial, and such leave was granted and said memorandum was herein filed, and the Defendant offering no evidence or other matters in support of said motion and the Court perceiving no good grounds therefore, the said Motion was overruled, to which action of the Court the Defendant objects and excepts.

And thereupon the Prosecuting Attorney tendered and asked leave to file an Information in writing, setting forth records of convictions and sentences of James William Oyler, thrice before, upon three several indictments returned against him in the Court of Quarter Sessions of the Peace for the County of Bedford in the Commonwealth of Pennsylvania, on the charges of Grand Larceny, Breaking and Entering, and Burglary, respectively, all being felonies punishable by confinement in the penitentiary, and alleging identity of the prisoner with the person names in each of said records, which Information and Records are now ordered filed herein, and, after being cautioned as to the effect thereof, the said Defendant James William Oyler acknowledged in open court that he is the same person as the person names in said Information and Records; and it is accordingly determined that said Defendant has been thrice before been convicted in the United States of crimes punishable by confinement in a penitentiary;

[fol. 32] And the Court, proceeding to pass sentence upon the Defendant upon the verdict of Murder in the Second degree found by the Jury on the trial of the

charge contained in the Indictment herein and upon the former convictions of Felonies as aforesaid, doth consider and order that the said Defendant James William Oyler to be confined in the penitentiary of this State for and during his natural life, to which action of the Court the Defendant objects and excepts.

And, the life sentence aforesaid having been imposed only because it appears mandatory to do so, and considering the unfortunate life and background of the Defendant, the Court deems it proper in the interest of justice, to recommend that the Director of Probation and Parole consider granting a parole to said Defendant as soon as he is eligible therefor.

The Clerk of this Court shall forthwith transmit to the Warden of the Penitentiary a copy of the Indictment, Conviction, and Sentence, of the said Defendant herein, and a copy of said information.

W. Merle Watkins
Judge

[fol. 33]

**IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON**

STATE OF WEST VIRGINIA EX REL.

JAMES W. OYLER, PETITIONER

v.

**D. E. ADAMS, WARDEN, WEST VIRGINIA PENITENTIARY,
MOUNDSVILLE, WEST VIRGINIA, RESPONDENT**

[fol. 34]

NOTICE OF MOTION FOR APPEAL

**Mr. Kenneth E. Hines, Clerk,
Supreme Court of Appeals,
Charleston, West Virginia.**

Dear Sir:

May this serve as advance notice of Motion for Appeal to the Supreme Court of the United States, should this petition be refused or denied by this the Supreme Court of Appeals of West Virginia.

May this also serve as a request for a copy of the petition itself filed, and a copy of the Court's denial order.

Respectfully Yours,

**/s/ James W. Oyler
Petitioner**

[fol. 35]

**IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MOTION FOR THE APPOINTMENT OF COUNSEL

The petitioner is a pauper, unable to pay counsel to represent him, and therefore, the petitioner respectfully requests that the Honorable Supreme Court of Appeals of West Virginia, appoint counsel to represent him.

Respectfully Submitted,

/s/ James W. Oyler
Petitioner

[fol. 36]

AFFIDAVIT

I, James W. Oyler, hereby swear that all the allegations made by me in my Petition for a Writ of Habeas Corpus are true facts.

/s/ James W. Oyler
Affiant

STATE OF WEST VIRGINIA)
COUNTY OF MARSHALL) SS:

Taken, sworn to and subscribed before me this 24 day of May, 1960, A. D.

/s/ Elinore Kirby
Notary Public

My Commission Expires May 31, 1967.

[fol. 37]

**IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

PETITION FOR WRIT OF HABEAS CORPUS

*To the Honorable Judges of the Supreme Court of
Appeals of West Virginia*

Your Petitioner respectfully represents that at the January, 1953, Term of the Circuit Court of Taylor County, West Virginia, he was indicted and tried for Murder.

The jury returned a verdict of guilty of Murder in the second degree, which is punishable by statute, by confinement in the Penitentiary for a period of from five (5) to eighteen (18) years. However, this sentence was withheld and never imposed, pending the filing of a bill of information by the Prosecuting Attorney, setting forth former convictions of the Petitioner, in a proceeding under the Habitual Criminal Statutes of West Virginia.

Petitioner points out that he has never been sentenced to a penitentiary before in his life, and further, that if he had been given prior notice that the Prosecuting Attorney was going to prosecute him as an Habitual Criminal and had petitioner been given proper time to prepare a defense against the said prosecution, petitioner could have obtained and presented proof, that he was not subject to prosecution as an Habitual Criminal, since he had never before been convicted or sentenced to a penitentiary as required by Chapter 61, Article 11, Sections 18 and 19 of the Code.

The petitioner was first notified that he was being charged as an Habitual Criminal, when he was brought before the Court and sentenced to life in prison.

The information filed by the prosecuting attorney, was filed in violation of the Habitual Criminal Statutes in that it does not set forth any convictions and sentences which were punishable by confinement in a penitentiary as required by said Statutes.

In truth and in fact the said information does not set forth any former convictions of any kind, but states in pertinent part that: . . . James William Oyler, thrice before, upon three several indictments returned against him in the Court of Quarter Sessions of the Peace for the County of Bedford in the Commonwealth of Pennsylvania, on the charges of Grand Larceny, Breaking and Entering, and Burglary, respectively, all being felonies punishable by confinement in the penitentiary . . .

The above mentioned charges were all had in a juvenile court, the Grand Larceny was punished by probation, the Breaking and Entering was punished on the same day in the same juvenile court, and was punished by commitment to the Pennsylvania Industrial School at Camp Hill. (The Burglary Charge was also punished [fol. 38] this day, in the same court, by commitment to the Pennsylvania Industrial School at Camp Hill.

There is attached hereto unquestionable proof that the charges referred to above were not of the nature which requires punishment as an Habitual Criminal, under Chapter 61, Article 11, Sections 18 and 19 of the West Virginia Code.

It is clearly established here that if the petitioner had been allowed the constitutional guarantee, of pretrial notice, this entire illegal and unconstitutional proceeding could have been avoided, but since the Habitual Criminal Statutes, as construed by the West Virginia Courts do not provide for or require that the accused be given prior notice Petitioner has been forced to serve more than seven years by illegal, unlawful, and unconstitutional confinement in the West Virginia Penitentiary.

Petitioner was discriminated against as an Habitual Criminal in that from January, 1940, to June, 1955, there were six men sentenced in the Taylor County Circuit Court who were subject to prosecution as Habitual offenders, Petitioner was the only man thus sentenced during this period. It is a matter of record that the five men who were not prosecuted as Habitual Criminals during this period, all had three or more felony convictions and sentences as adults, and Petitioner's former convictions were a result of Juvenile Court actions.

Petitioner is not held in confinement by virtue of a legal and proper commitment, in that said commitment does not meet the requirements of the law providing for a legal commitment.

There is presented herewith certain affidavits, and motions required by law and there is also presented herewith certified court records and other authentic documents and data which clearly show and prove that Petitioner's present confinement in the West Virginia Penitentiary, by D. E. Adams, Warden thereof, is illegal, unlawful, and contrary to the laws and constitutions of both State and Nation.

Wherefore, Your Petitioner prays that a Writ of Habeas Corpus be granted and that he be restored to his rightful liberty.

Respectfully Submitted:

/s/ James W. Oyler
Petitioner

[fol. 39]

POINTS AND AUTHORITIES

#1. Petitioner was not informed prior to trial that he was being prosecuted as an Habitual Criminal and failure to inform the Petitioner and to give him ample time to prepare a defense is a violation of the Fourteenth Amendment to the Constitution of the United States in that Due Process was denied.

#2. The information filed against the Petitioner was false and void in that it did not meet the requirements of Chapter 61, Article 11, Sections 18 and 19, of the Code.

#3. The introduction of two former juvenile convictions had on the same day in the same Court violates Chapter 61, Article 11, Sections 18 and 19 of the Code. See Dye-V-Skeen, 135 W. Va. 90, 62 S.E. 2d, 681, 24 A.L.R. 2d 1234. Due Process was violated.

#4. The Petitioner was discriminated against as an Habitual Criminal in that the Taylor County Circuit Court proceeded against him and allowed five other persons in like circumstances to evade a life sentence as required by statute. Equal protection and equal justice was denied.

#5. The Petitioner was discriminated against by selective use of a mandatory State Statute, in that 904 men who were known offenders throughout the State of West Virginia were not sentenced as required by the mandatory Statutes, Chapter 61, Article 11, Sections 18 and 19 of the Code. Equal Protection and Equal Justice was denied.

#6. The commitment order under which Petitioner is held in confinement is void, in that it does not conform to the law governing such orders of commitment. See: 15 American Jurisprudence Criminal Law—502 and Roberts-V-Tucker, Warden, Case 10922, Nov. 25, 1957, Cited at 100 S.E. 2d, 550.

#7. The Fourteenth Amendment to the Constitution of the United States requires that: All persons born or naturalized in the United States are subject to the jurisdiction thereof are citizens of the United States, and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

#8. Petitioner respectfully requests that he be granted a writ of Habeas Corpus and that he be restored to his liberty as is required by the Fourteenth Amendment to the Constitution of the United States.

Respectfully Submitted:

/s/ James W. Oyler
Petitioner

[fols. 40-44] • • • •

[fol. 45] STATISTICAL DATA RE WEST VIRGINIA
HABITUAL CRIMINAL STATUTES

The document to which this is attached was compiled by civic leaders for the purpose of presentation to the State Legislature, in an attempt to have the Habitual Criminal Statutes abolished, amended, or otherwise corrected.

This document was offered to the State Legislature in 1967, and one House voted 98 to 2, in favor of abolishing, amending, or correcting the Habitual Criminal Statutes, but the issue was not pursued to a climax.

This document is an exact copy of the Original on file at the Capitol Building, Charleston, West Virginia, and was transcribed from Federal Bureau of Investigation records on file at the West Virginia Penitentiary.

[fol. 46]

AUTHENTIC STATISTICAL DATA, TRANSCRIBED FROM "F.B.I." REPORT, AND ON FILE AT THIS INSTITUTION, OF THOSE PRISONERS SENTENCED TO THE PENITENTIARY IN THE PERIOD FROM 1940 TO JUNE 1955, OF WHOM WERE SUBJECT TO A LIFE SENTENCE UNDER THE MEANING OF THE HABITUAL CRIMINAL ACT, BUT ACTUALLY RECEIVING SENTENCES OF LESSER PENALTY.

Name & WVP Number	County	Prior Convictions	Term of Sentence
30261 Blankenship, Sidney A.	Cabell	3	30 Years
30527 Stone, Warren R.	Cabell	3	1 - 10 "
31100 Swim, Linville	Cabell	6	30 "
31913 McClure, Elwood	Kanawha	4	2 - 10 "
32252 Higginbotham, Arlie	Kanawha	5	1 - 20 "
32617 Israel, Willie	Marion	3	1 - 30 "
32749 Powell, James	Cabell	3	2 - 10 "
33215 Meridith, James A.	Harrison	3	1 - 10 "
33309 Barbour, Burman	Mercer	3	2 - 10 "
33372 Linkenauager, Robert	Kanawha	3	2 - 10 "
33514 Myers, William	Kanawha	4	2 - 10 "
33775 Burnett, Joseph B.	Logan	4	1 - 10 "
33820 Lee, Alexander S.	Wood	6	2 - 20 "
33947 Armstead, Phillip	Monongalia	4	1 - 15 "
33979 Monore, Fred	Harrison	5	5 - 18 "
33993 Harmon, Thomas	McDowell	4	1 - 15 "
34033 Belcher, Bernard	Kanawha	3	15 "
34087 Brown, Charles	Kanawha	4	2 - 25 "
34077 Beharry, James J.	McDowell	5	1 - 10 "
34222 Dunkley, Fred F.	Fayette	3	1 - 15 "
34442 Walker, Leo	Kanawha	4	1 - 10 "
34591 Dingess, Brady	Logan	4	2 - 20 "
34603 Lewis, Thomas	Marshall	4	1 - 10 "
34675 Emert, George C.	Cabell	8	1 - 15 "
34696 Breedlove, George	Taylor	3	1 - 10 "
34802 Osler, Richard	Kanawha	4	1 - 15 "
34810 Ratliff, Sherman T.	Kanawha	4	1 - 5 "
34907 Shelly, Paul	Wetzel	3	5 - 18 "
34967 Miller, Raymond	Kanawha	5	2 - 15 "
34970 Bibb, Edward	Harrison	3	2 - 10 "
35070 Spears, George	Cabell	4	1 - 15 "
35105 Boyd, Charles C.	Kanawha	3	1 - 15 "
35133 Myers, Roy Earl	Wood	4	1 - 15 "
35190 Napier, George	Jefferson	3	1 - 15 "
35254 Elswick, Lundy	Wyoming	3	1 - 10 "
35367 Tyers, James W.	Greenbrier	3	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
35635 Vaughn, Leon	Summers	3	1 - 15 Years
35638 McBrier, Harry	Fayette	5	1 - 15 "
35652 Conley, Creed W.	Wood	3	1 - 20 "
35822 Hoffman, Rudolph	Ohio	4	1 - 15 "
35849 Workman, Henry D.	Cabell	3	15 "
35873 Crist, Raymond	Wyoming	3	1 - 15 "
35896 Berry, John W.	Kanawha	3	1 - 10 "
35936 Anderson, Jess	Raleigh	4	1 - 15 "
35967 Poindexter, Clarence	Ohio	3	1 - 15 "
35974 Campbell, Shirly	Cabell	4	1 - 15 "
35996 Dingess, Carroll	Cabell	3	1 - 10 "
36069 Rosier, Albert	Randolph	3	2 - 10 "

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36074 Cramer, Charles	Ohio	6	1 - 15 "
36136 Brewster, Cornelius	Logan	5	1 - 20 "
36206 Hendricks, Oliver	Logan	5	1 - 10 "
36231 Fielder, Herbert N.	Mercer	3	2 - 10 "
36372 Height, Walter	Marshall	3	1 - 15 "
36462 Skyles, Willard	Kanawha	3	25 "
36493 Blair, Clyde	McDowell	4	1 - 10 "
36496 Horvath, Frank	McDowell	3	2 - 10 "
36515 Harshburger, Leo	Cabell	3	1 - 10 "
36530 Crosby, Nathaniel	Logan	3	2 - 10 "
36533 Jordan, Willie J.	Logan	3	2 - 10 "
36527 Grades, Albert W.	Wetzel	3	15 "
36691 Petty, Ralph	Wood	5	1 - 10 "
36712 Winston, Roy	Wood	3	1 - 10 "
36725 Carter, Howard L.	Mingo	3	1 - 10 "
36747 Hayden, Leonard	Kanawha	4	25 "
36753 Benson, Claude R.	Wood	7	2 - 10 "
36836 Banks, Eugene	Pocahontas	3	1 - 15 "
36907 Colliers, Sheriin	Cabell	7	1 - 10 "
36897 Sailor, Alfred E.	Ohio	3	2 - 10 "
36933 Mundy, Lloyd	Greenbrier	3	1 - 10 "
36962 Waddell, William	Raleigh	4	1 - 15 "
36997 Collins, Lee E.	Mingo	4	2 - 20 "
37060 Phillips, Carranza	Kanawha	4	2 - 10 "
37208 Blair, Clarence	Cabell	4	2 - 10 "
37251 Knight, William L.	Marion	3	1 - 10 "
37291 Riffe, Raymond	Wood	4	1 - 10 "
37373 Coffman, William J.	Harrison	5	1 - 10 "
37279 Herko, Joseph P.	Cabell	6	2 - 10 "
37344 Wheeler, P. A.	Cabell	6	2 - 10 "
37357 Parsons, Charles	Kanawha	4	1 - 10 "
37372 Narcum, Wilson	Logan	3	1 - 15 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
37401	Hall, Lawrence	Mason	3	2 - 10 Years
37407	Cantrell, Charles	Mingo	5	1 - 15 "
37464	Hargrove, Phillip	Kanawha	3	2 - 10 "
37493	Strickland, Clarence	Kanawha	4	25 "
37497	Anderson, Lewis D.	Boone	3	10 - 25 "
37504	Jefferson, George A.	Wood	5	1 - 10 "
37505	Richardson, Jay	Cabell	5	1 - 10 "
37521	Dempsy, William	Logan	3	1 - 10 "
37625	Sherwood, Curtis R.	Raleigh	4	1 - 10 "
37669	Johnson, William C.	Kanawha	4	5 - 18 "
37717	Woodard, Calvin F.	Webster	3	1 - 10 "
37781	Thompson, Charles	Cabell	3	1 - 15 "
37787	Holley, Sam	Cabell	6	1 - 10 "
37788	Brittentine, Daniel	Cabell	3	1 - 15 "
37819	Christian, Thomas W.	McDowell	3	1 - 15 "
37820	Grant, Ernest	McDowell	5	1 - 10 "
37831	Anderson, Claude M.	Raleigh	4	1 - 15 "
37834	Koplan, Harry	Cabell	6	1 - 10 "
37869	Jarrell, John R.	Kanawha	4	1 - 15 "
37874	Patterson, Joe	Raleigh	4	1 - 10 "
37894	Long, Jermiah S.	Mercer	6	1 - 10 "
37937	Kidd, Leo Henry	Kanawha	5	1 - 10 "

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37941	Smith, Dewey	Kanawha	6	25 "
37960	Fogaa, Charles	Cabell	3	1 - 10 "
37992	Stanley, Curtis	Mingo	4	1 - 10 "
38007	Selvaggio, Tibaldo	Barbour	4	1 - 10 "
38019	France, Thomas	Cabell	4	1 - 15 "
38021	Martin, Carl D.	Preston	5	2 - 10 "
38030	Allen, Edward	Lewis	4	2 - 10 "
38032	Beach, Raymond	Cabell	3	2 - 10 "
38055	Bennett, Clarence J.	Randolph	3	1 - 15 "
38094	McGee, George W.	Kanawha	3	2 - 10 "
38107	Helper, Joe	Greenbrier	4	1 - 10 "
38140	Merrill, Tilden	Harrison	4	1 - 15 "
38188	Eplin, Wilbert J.	Kanawha	4	1 - 10 "
38202	Osha, Ronnie W.	Wood	4	1 - 10 "
38243	Spears, Thurman	Cabell	4	2 - 15 "
38248	Kelly, Rubon	Berkeley	4	1 - 10 "
38255	Wheeler, Doyle F.	Putnam	3	5 "
38257	Pate, George	Putnam	3	1 - 10 "
38270	Davis, Charles	Kanawha	3	1 - 10 "
38334	Morris, Macon E.	Kanawha	3	18 "
38364	Shipper, Lawrence	Berkeley	7	1 - 15 "
38397	Meadows, Everett C.	Randolph	3	1 - 15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
38390 Cannon, Eugene	Harrison	3	1 - 10 Years
38391 Russell, James	Wood	3	2 - 10 "
38393 Sutphin, Arvit	Roane	3	1 - 10 "
38454 Gonzales, David	Brooke	3	1 - 15 "
38480 King, William	Grant	3	1 - 25 "
38513 Kerna, William	Wayne	3	2 - 10 "
38517 Walker, Owen	Wayne	3	1 - 5 "
38531 Hyatt, Harold	McDowell	3	1 - 15 "
38543 Lewis, Ronnie	Kanawha	6	1 - 10 "
38573 Ward, James	Wyoming	3	1 - 10 "
38575 Kicks, Walter	Wyoming	4	1 - 10 "
38581 Winston, William	Raleigh	3	1 - 10 "
38617 Gross, Haymond	Fayette	6	2 - 10 "
38630 Mayle, Eulah	Barbour	4	2 - 10 "
38635 Bever, Irvin J.	Marion	4	1 - 10 "
38673 Shipman, Jared T.	Harrison	3	2 - 10 "
38680 Hitt, Emmitt	Kanawha	3	5 - 18 "
38697 Wills, Earl A.	Mercer	3	1 - 10 "
38715 Trickey, William S.	Ohio	6	1 - 5 "
38739 Riser, Louis J. Jr.	Mineral	3	1 - 10 "
38748 McGowan, James D.	Jefferson	4	1 - 10 "
38770 Whitacre, Welba	Morgan	4	15 "
38771 Ackley, Nathan	Webster	3	1 - 10 "
38774 Barker, Harold J.	Wood	3	1 - 10 "
38791 Waybright, Dewey	Wood	3	1 - 10 "
38825 Jenkins, Festus	Jefferson	5	1 - 10 "
38840 Bean, Barkley R.	Kanawha	7	1 - 10 "
38849 Riley, James	Kanawha	3	10 "
38850 Capps, Thomas W.	Kanawha	3	1 - 10 "
38852 Legg, William C.	Raleigh	3	1 - 10 "
38854 Markle, William J.	Kanawha	3	1 - 15 "
38891 Plumm, Neal C.	Randolph	4	2 - 10 "

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38875 Bailey, Cecil	Harrison	5	1 - 10 "
38877 Clouse, Donald R.	Brooke	3	1 - 10 "
38889 Hudash, James	Monongalia	3	10 "
38905 Lether, Kermitt	McDowell	3	1 - 10 "
38907 Marshall, Rudolph	McDowell	3	1 - 10 "
38937 Hubbard, Harry C.	Jackson	3	1 - 15 "
38955 Hite, Thomas	Berkeley	3	2 - 15 "
38980 Holley, Herman L.	Kanawha	4	1 - 10 "
38984 Marrow, Denver	Kanawha	3	2 - 10 "
38997 Swigger, William R.	Harrison	5	1 - 10 "
39015 Sheppard, Thomas	Logan	3	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
39024 Davis, Alfred	Ohio	3	1 - 10 Years
39030 Barry, Joseph	Hampshire	3	1 - 10 "
39033 Hopson, Donald H.	Wood	7	25 "
39042 Bell, Bernard J.	Wayne	3	2 - 10 "
39048 Pierson, Charles	Kanawha	5	1 - 10 "
39071 Baker, Edward	Raleigh	3	1 - 10 "
39081 Barnhart, Paul	Preston	3	1 - 5 "
39104 McBee, Clarence T.	Mineral	4	1 - 15 "
39114 Gill, Joseph C.	Summers	5	1 - 15 "
39125 Hamrick, Clarence	Webster	4	1 - 10 "
39171 White, Clem L.	Fayette	4	2 - 20 "
39191 Alleman, Calvin	Brooke	3	1 - 10 "
39198 Romine, Charlie	Harrison	4	2 - 10 "
39240 Savino, Angelo J.	Gilmer	3	1 - 10 "
39212 Johnson, Marcellous	Raleigh	3	1 - 10 "
39213 Douglas, Coy J.	Raleigh	3	1 - 10 "
39220 Drake, Eddie Lee	Kanawha	3	1 - 10 "
39227 Hysell, Carl	Kanawha	3	1 - 10 "
39359 Beaver, Jack G.	Wayne	3	1 - 10 "
39261 Starcher, Clari C.	Putnam	3	10 - 25 "
39272 McClain, Walter	Wayne	4	1 - 10 "
39283 Shears, William	Marion	5	1 - 5 "
39298 Richmond, Paul	Randolph	3	2 - 10 "
39302 Leasure, John	Wood	4	1 - 10 "
39312 Menefee, Glen D.	Marion	3	1 - 10 "
39313 Kelly, Harlan L.	Wood	4	2 - 10 "
39319 Kessell, Charles E.	Kanawha	3	1 - 10 "
39356 Ragus, Troy	Kanawha	6	2 - 10 "
39263 Fain, Frank	Fayette	3	1 - 10 "
39364 Daniels, Samuel	Raleigh	3	2 - 10 "
39283 Patterson, Charles	Raleigh	3	1 - 10 "
39389 Hooks, Charles	Harrison	5	1 - 10 "
39394 Drake, Lovell	Putnam	3	2 - 10 "
39392 Long, Calvin W.	Randolph	4	1 - 10 "
39409 Hurd, Weely	Harrison	3	1 - 10 "
39410 Bernard, Joseph	Harrison	5	1 - 5 "
39416 Curtis, Robert	Wayne	4	1 - 10 "
39421 Coles, Walter H.	Kanawha	3	1 - 5 "
39423 Favors, Henry H.	Kanawha	5	25 "
39434 Smith, William A.	Kanawha	3	1 - 10 "
39455 Jenkins, Laber	Logan	3	1 - 10 "
39474 Billinton, Richard	Ohio	3	1 - 5 "
39485 Chance, Walter	Kanawha	4	1 - 10 "
39358 Taylor, Lawrence P.	Mineral	3	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
[fol. 50]			
39693 Dealey, Charles	Monongalia	3	1 - 5 Years
39695 Ware, Everett L.	Upshur	3	1 - 15 "
39699 White, Douglas	Mineral	5	1 - 15 "
39611 Stone, Bob	McDowell	3	2 - 15 "
39649 Belcher, Tony	Kanawha	4	2 - 10 "
39649 Shoen, Floyd Jr.	Kanawha	3	1 - 5 "
39657 Mass, Floyd D.	Kanawha	6	1 - 5 "
39667 Rhodes, Walter R.	Harrison	3	1 - 10 "
39694 Raines, Harry	Mingo	5	1 - 10 "
39610 Moore, William	Lincoln	3	1 - 10 "
39611 Fry, Earl	Lincoln	3	1 - 5 "
39617 Atkins, Leonard	Lincoln	3	2 - 10 "
39683 Cyrus, Grover	Logan	6	2 - 10 "
39647 Foy, Frank	Mercer	3	1 - 15 "
39643 Mullish, Jake	Mercer	4	2 - 15 "
39681 Bailey, Donald E.	Wood	4	2 - 10 "
39683 Morris, Harry V.	Wood	3	1 - 10 "
39706 Mitchem, Arthur	McDowell	3	1 - 15 "
39709 Cooper, Edgar T.	Fayette	5	1 - 15 "
39710 Snyder, Robert P.	Fayette	3	2 - 10 "
39712 Richardson, Edward	Fayette	6	1 - 15 "
39732 French, Wiley Jr.	Mercer	3	1 - 10 "
39768 Barton, Jack	Kanawha	3	15 "
39737 King, Russell	Clay	4	1 - 10 "
39736 Gray, William	Wetzel	3	1 - 10 "
39881 Dobbs, Eugene	Monongalia	3	1 - 10 "
39882 Starr, Thomas	Monongalia	4	1 - 10 "
39883 Cook, Robert K.	Tyler	4	1 - 10 "
39884 Gostle, Carl E.	Tyler	4	1 - 15 "
39815 Brannon, James H.	Kanawha	5	1 - 10 "
39821 Kidd, James E.	Kanawha	3	5 - 20 "
39824 Stone, Charles E.	Kanawha	3	1 - 15 "
39840 Richards, John	Wyoming	3	5 - 20 "
39841 Pike, Theodore	Brooks	7	2 - 10 "
39844 Ballinger, John	Monongalia	4	1 - 5 "
39846 Issa, Robert H.	Mercer	9	1 - 10 "
39888 Osborne, Oale Jr.	Logan	3	10 "
39874 Sayre, Gilman	Cabell	3	1 - 10 "
39916 Scott, James D.	Kanawha	3	1 - 10 "
39918 Alexander, Louisas	Kanawha	3	1 - 15 "
39882 George, Mason	Hardy	3	1 - 10 "
39864 Blanton, Boone	Mingo	3	15 "
39876 Dixon, Webster W.	Jefferson	3	15 "
39879 Palmer, John L.	Marion	5	1 - 15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
30000 Roberts, Carl	Cabell	5	1 - 15 Years
30002 Cobb, Orval E.	Kanawha	5	2 - 10 "
30006 Blankenship, Andrew	Kanawha	5	1 - 10 "
40008 Baugan, Bill E.	Mercer	3	1 - 10 "
40016 Roberts, William	Fayette	3	20 "
40017 Hoffman, George	Ohio	3	1 - 10 "
40044 Hagston, Charlie	McDowell	3	1 - 10 "
40048 Jenkins, William J.	Fayette	3	1 - 10 "
40062 Byrd, Paul	Cabell	3	1 - 10 "

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40066	McVey, Melvin	Kanawha	3	1 - 10 "
40068	Hall, Oris F.	Kanawha	5	1 - 10 "
40069	Hall, Walter J.	Kanawha	3	1 - 10 "
40070	Davidson, J. E. Jr.	Kanawha	3	1 - 15 "
40079	Taylor, Robert	Wyoming	3	1 - 10 "
40080	Webb, Clarence	Kanawha	3	1 - 10 "
40092	Spencer, Rome	Brooke	3	10 "
40100	Robinson, Charlie	Morgan	5	1 - 15 "
40110	Johns, Charles E.	Morgan	4	1 - 15 "
40124	Lambert, Ervie	Pendleton	3	1 - 10 "
40127	Carr, James C.	Mineral	3	1 - 10 "
40132	Johnson, Urban	Kanawha	3	1 - 15 "
40136	Harbert, George	Taylor	3	1 - 10 "
40182	Smith, Douglas H.	McDowell	3	1 - 10 "
40194	Holmandollar, Walter	Mercer	3	1 - 10 "
40196	Carway, Clayton	Mercer	6	1 - 10 "
40212	Bane, James N.	Greenbrier	3	1 - 10 "

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(as of June 2, 1965, The following inmates still at WVP)

30006	Ford, Durward	Raleigh	3	2 - 15 "
30012	Barker, Eaton	Mineral	5	1 - 15 "
30013	Dillen, James	Kanawha	4	1 - 10 "
30031	Kirk, Clarence	Kanawha	4	1 - 10 "
30036	Griffith, Russell	Kanawha	3	1 - 10 "
30040	DeBoard, Paul	Kanawha	3	2 - 10 "
30062	Gray, Ralph	McDowell	3	1 - 10 "
30010	Hendley, H. V.	Braxton	3	2 - 10 "
30021	Williams, Lorenzo	Brooks	3	2 - 10 "
30023	Harper, Clarence	Raleigh	3	2 - 10 "
30025	Lott, Dearman	Wood	3	15 "
30053	Miller, Basil	Summers	4	1 - 15 "
30056	Huffman, James H.	Summers	3	1 - 15 "
30058	Moore, George	Summers	3	1 - 15 "
30064	Wiley, Dennis W.	Raleigh	3	2 - 15 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
30873	Aliff, Lewis	Raleigh	3	6 Years
30876	Wills, Howard W.	Fayette	3	2-10 "
30886	Graybill, Orvil	Greenbrier	3	2-10 "
30888	Quinn, Harley	Harrison	3	1-10 "
30896	Benson, Clarence	Mason	3	2-10 "
31008	Jones, Willie	Kanawha	3	2-10 "
31008	Willis, Forrest K.	Kanawha	3	12 "
31010	Watkins, Robert	Kanawha	3	1-15 "
31013	Shultz, Foster R.	Kanawha	3	1-15 "
31026	Derrick, Estil	Kanawha	3	1-15 "
31080	Burdette, Leonard	Kanawha	3	8 "
31087	Davis, Cecil	Kanawha	3	1-10 "
31092	McCoy, Lealie	Kanawha	3	45 "
31092	Self, John R.	Cabell	5	2-15 "
31495	Bright, Charles	Cabell	3	1-10 "
31104	Jones, Bonnie	Cabell	3	1-15 "
31111	Murphy, Erthal A.	Wayne	3	2-15 "
31137	Watts, Harry	Monongalia	3	15 "
31141	Matheny, Okey	Pocahontas	3	2-10 "

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31156	Hill, Eli Jr.	Mercer	3	1-10 "
31170	Patterson, Joe	Fayette	3	1-10 "
31178	Gibson, Brown	Kanawha	3	1-15 "
31180	Ponten, Willie	Kanawha	3	1-10 "
31204	Palla, Ralph	Cabell	3	1-10 "
31240	Westmoreland, C.	Summers	5	1-20 "
31246	Mooney, Grant	Kanawha	3	1-15 "
31248	Deberry, Martin	Preston	3	1-15 "
31271	Shappard, Clinton	Mercer	3	6 "
31285	Smith, Allen	Nicholas	3	1-5 "
31300	Kelmas, Russell	Greenbrier	3	1-10 "
31306	Hopkins, Howard C.	Monongalia	4	2-10 "
31317	Manhenship, Steacher	McDowell	3	1-10 "
31320	Peddrell, Babe E.	McDowell	3	1-10 "
31325	Carter, Harrison	McDowell	3	1-10 "
31327	Combs, Orville	McDowell	3	2-10 "
31337	Mace, Floyd D.	Kanawha	5	1-5 "
31338	Danahire, Paul	Ohio	3	2-10 "
31391	Reas, John	Taylor	3	1-10 "
31396	Standard, Woodrow	Taylor	3	1-20 "
31400	Harvey, James E.	Jackson	4	1-10 "
31404	Lacaria, George	Harrison	3	10 "
31408	Wetzel, C. I.	Grant	3	2-10 "
31422	Fletcher, Ray	Berkley	5	10 "
31433	Wilson, Chris	Wood	4	2-10 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
31439	Cunningham, Roy	Kanawha	3	2 - 10 Years
31440	Johnson, Chester M.	Kanawha	3	1 - 3 "
31446	Mollohan, Glen	Kanawha	3	10 "
31451	Smith, Dewey	Kanawha	5	1 - 5 "
31459	Daniel, Elijah	Kanawha	5	2 - 10 "
31462	Cobb, Robert	Kanawha	5	1 - 10 "
31470	Adkins, Roy	Putnam	3	1 - 10 "
31496	Hoard, Robert	Marion	5	2 - 10 "
31499	Richardson, Eddie	Marion	5	1 - 15 "
31510	Powell, William	Ohio	3	1 - 10 "
31515	Helmandollar, Hubert	Mercer	3	1 - 10 "
31522	Underwood, Ray	Mercer	4	1 - 10 "
31525	Spencer, James E.	Mercer	3	1 - 10 "
31526	McClure, William Jr.	Mercer	7	2 - 10 "
31530	Williams, Lewis	Raleigh	4	2 - 15 "
31535	Hairston, Charles	Raleigh	3	1 - 15 "
31570	Young, David	Cabell	4	1 - 15 "
31571	Kicks, Harry R.	Cabell	3	1 - 10 "
31573	Neal, Ernest E.	Cabell	4	1 - 15 "
31575	Johnson, Fate	Cabell	5	1 - 15 "
31605	Bilinger, Herman H.	Grant	3	2 - 10 "
31624	Crouch, Willie	McDowell	3	1 - 10 "
31635	Combs, Arthur	Boone	3	2 - 10 "
31644	Morgan, Rose	Wood	5	1 - 15 "
31662	Meadows, Carl	Harrison	3	1 - 10 "
31671	Daniels, Charles	Harrison	3	1 - 10 "
31681	Torchi, Frank	Marion	3	1 - 10 "
31683	Smith, Emmett	Marion	5	1 - 10 "
31701	Crum, John	Logan	5	1 - 10 "

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31704	Smith, Lovell	Logan	3	1 - 15 "
31711	Adkins, Elza	Logan	3	1 - 5 "
31730	Evans, Theodore	Kanawha	3	1 - 10 "
31731	Hall, Cris	Kanawha	3	1 - 10 "
31737	Thompson, Conway	Kanawha	5	2 - 10 "
31740	Russell, Joe	Kanawha	4	1 - 15 "
31750	Oliver, Raymond	Kanawha	4	1 - 10 "
31755	Roberts, Edward	Kanawha	3	1 - 10 "
31757	Webb, Walter	Kanawha	3	1 - 10 "
31773	Welley, George	Cabell	3	1 - 10 "
31775	Pennington, John	Cabell	3	1 - 10 "
31778	Wilson, Truman	Cabell	3	1 - 10 "
31785	Spears, George	Cabell	4	1 - 15 "
31791	Martin, Dell	Cabell	3	1 - 10 "
31805	Frazier, Ivan	Kanawha	3	2 - 15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
31816	Walker, Stone	Summers	3 1 - 15 Years
31828	White, Clem	Fayette	3 1 - 10 "
31851	Meadows, Spurgeon	Mercer	3 1 - 20 "
31852	Moaley, Eugene	Mercer	5 1 - 10 "
31857	Brown, Eugene	Mercer	3 1 - 10 "
31874	Smith, Oscar	Webster	3 2 - 15 "
31882	Jackson, Walker	McDowell	3 1 - 10 "
31887	Dumbrowski, Andy	Brooke	3 2 - 10 "
31888	Ellingyon, Olin	Brooke	5 1 - 10 "
31891	Willis, Marlin	Lincoln	3 1 - 5 "
31902	Barker, Harold J.	Ritchie	3 1 - 10 "
31909	Nagy, Steve	Kanawha	6 2 - 10 "
31911	Hugh, John	Kanawha	3 2 - 10 "
31934	Miller, Raymond	Kanawha	4 1 - 10 "
31940	Ross, Harry	Berkley	3 1 - 10 "
31941	Snyder, Robert N.	Berkley	5 1 - 10 "
31945	Turner, Charles L.	Mineral	3 1 - 10 "
31946	Groves, William	Pocahontas	3 1 - 5 "
31954	Gilas, James W.	Morgan	4 1 - 10 "
31956	Lee, Robert	Jefferson	3 2 - 10 "
31960	Lierson, Charles	Kanawha	4 12 "
31962	Johnson, Urban	Kanawha	3 2 - 15 "
31963	Auraby, George F.	Kanawha	4 1 - 10 "
31969	Dorsey, Eddie	Ohio	3 5 "
31971	Lucas, Leonard	Ohio	4 1 - 10 "
31973	Hummell, Fred	Marshall	4 1 - 10 "
31995	Smith, Robert	Summers	3 25 "
31998	Lough, William F.	Barbour	3 1 - 10 "
32015	Roberts, Elsworth	Cabell	3 1 - 10 "
32017	Watkins, John	Cabell	3 1 - 15 "
32018	McGue, O. J.	Cabell	4 1 - 10 "
32019	Smith, Homer	Cabell	5 2 - 15 "
32025	Spears, Edward	Logan	3 1 - 10 "
32051	Fultz, John G.	Hardy	4 1 - 10 "
32052	Gather, Bunion	Mercer	3 5 "
32046	Wyer, John W.	Harrison	3 1 - 10 "
32049	Long, Archie	Marion	3 1 - 15 "
32050	Queen, Clifford	Marion	3 1 - 10 "
32061	Neff, Lundy	Nicholas	3 1 - 15 "
32078	Dancy, Elmer	Fayette	3 1 - 10 "
32081	Treadway, Lealie	Fayette	3 1 - 10 "

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32084	Clark, Booker	Kanawha	3 1 - 10 "
32085	Green, Irwin	Kanawha	4 2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
32086 Lester, Kyle J.	Kanawha	3	1 - 5 Years
32101 Stoeffel, Orlan	Kanawha	3	2 - 10 "
32110 McKinney, Amos	Summers	4	1 - 15 "
32124 St. Clair, Charles	McDowell	4	1 - 15 "
32135 Johnson, John H.	Wayne	4	1 - 10 "
32151 Rays, Lonnie W.	Taylor	3	2 - 10 "
32158 Cutlip, Vesper R.	Pocahontas	3	2 - 10 "
32165 Harria, Alonzo	Logan	5	1 - 10 "
32166 Finley, James	Logan	3	1 - 10 "
32176 Dingess, Charles	Logan	3	1 - 5 "
32181 Baisden, Harrison	Mingo	4	5 - 18 "
32203 Robinson, Dallas H.	Cabell	3	1 - 15 "
32204 Bolt, Isaac	Cabell	3	15 "
32207 English, Acy Glen	Cabell	3	2 - 15 "
32212 Strickland, Clarence	Kanawha	3	1 - 15 "
32233 Allen, James E.	Mercer	5	2 - 10 "
32248 Smith, George	Ohio	3	1 - 10 "
32257 Lott, Clyde W.	Wood	3	1 - 10 "
32269 Blunt, Willie	McDowell	3	2 - 10 "
32272 Scarberry, Clyde	McDowell	4	1 - 5 "
32277 Taylor, William H.	Braxton	3	1 - 15 "
32293 Harris, Hubert	Doddrige	3	1 - 10 "
32302 Jones, William	Harrison	5	1 - 10 "
32303 Rucks, William G.	Harrison	4	1 - 15 "
32304 Ross, Hohn H.	Harrison	4	1 - 10 "
32305 Jones, Regnald	Harrison	4	1 - 15 "
32306 Lowery, M. H.	Harrison	4	1 - 10 "
32308 Coffman, William	Harrison	4	1 - 10 "
32309 Rice, Woodland	Harrison	4	1 - 10 "
32316 Lipscomb, Howard	Roane	4	1 - 10 "
32329 Loomis, Leslie C.	Berkley	3	1 - 10 "
32330 Myers, Roy E.	Wood	3	1 - 10 "
32352 Oshe, Romeo	Wood	4	1 - 10 "
32355 Williams, Henry Jr.	Wyoming	7	1 - 10 "
32364 Drake, Bill	Raleigh	4	1 - 15 "
32366 Jackson, Nelson	Mercer	7	1 - 15 "
32374 Day, Gorge	Mercer	3	2 - 10 "
32382 Dillon, Ferlie	Cabell	3	7 "
32383 Spears, James	Cabell	4	1 - 15 "
32385 Phillips, Carranza	Cabell	3	1 - 15 "
32386 Daniels, John A.	Cabell	3	1 - 10 "
32388 Maxwell, Webster	Cabell	4	1 - 5 "
32397 Mullett, Fred	Cabell	4	1 - 10 "
32302 Duffy, John E.	Wood	3	2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
32430 Willard, Charles	Berkley	4	1-10 Years
32432 Wilson, George	Kanawha	6	2-10 "
32433 Troy, E. B.	Kanawha	4	2-10 "
32444 McClure, Lyle	Kanawha	3	1-15 "
32465 Johnson, W. S.	Kanawha	4	1-15 "
32467 Banks, Dewill E.	Harrison	4	1 "
32506 McIver, Alfred	Harrison	5	1-10 "
32509 Hostottle, Gerald E.	Wood	3	1-10 "
32332 Jefferson, George	Wood	4	

[fol. 55]

32534 Riley, James	Kanawha	3	1-10 "
32537 Hull, L. A.	Kanawha	3	2-10 "
32555 Goodby, Ollie	McDowell	5	1-10 "
32567 Price, John	McDowell	3	1-5 "
32571 Boggs, Argel	Marshall	3	2-10 "
32597 Rose, Shelby	Raleigh	5	1-5 "
32601 Lamasters, Walter	Randolph	4	1-5 "
32607 Goodman, Abraham	Cabell	3	1-10 "
32608 Wylie, Theodore	Cabell	5	1-15 "
32610 McCoy, Golden	Cabell	4	1-15 "
32619 Lowther, Mallard F.	Harrison	4	1-15 "
32620 Stone, James	Kanawha	4	1-10 "
32630 Cleveland, Earl	Harrison	3	1-10 "
32649 Lotia, Brisco	Kanawha	4	1-10 "
32650 Fibeon, John	Kanawha	5	2-10 "
32660 McBrayer, Harry	Summers	3	1-10 "
32662 Lilly, Owen Q.	Summers	3	2-10 "
32663 Phillips, Adam H.	Fayette	3	1-10 "
32676 Burton, Robert	Raleigh	3	1-10 "
32678 Houck, Charles	Raleigh	3	1-15 "
32699 Nicholson, Walter	Lewis	3	1-10 "
32700 Tolley, John A.	Webster	4	1-8 "
32712 Snell, Andy	Berkley	3	1-15 "
32715 Bailey, Victor A.	Kanawha	3	1-10 "
32731 Hooks, Charise	McDowell	3	1-10 "
32732 Johnson, Lewis E.	McDowell	3	2-10 "
32733 Prater, Anthony	McDowell	3	1-15 "
32734 Spears, Thruman	Cabell	3	1-15 "
32748 Long, Samuel	Cabell	5	1-10 "
32750 Tobinsson, Stanley	Cabell	3	1-10 "
32755 Broughton, James	Logan	3	1-5 "
32784 Newhouse, James D.	Kanawha	4	1-10 "
32793 Carrow, Tom	Kanawha	4	1-10 "
32801 Hamrick, Joe	Monongalia	5	2-10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
32831 Fain, Carl	Raleigh	5	1 - 10 Years
32834 Baker, Hugh	Barbour	3	1 - 10 "
32839 Pauley, Albert	Cabell	5	1 - 10 "
32844 Woodrow, Raymond	Kanawha	3	2 - 10 "
32854 Copley, Elbert	Logan	3	7 "
32855 Goodwin, George T.	Harrison	4	1 - 15 "
32869 Hedley, Hubert	Wetzel	3	1 - 15 "
32884 Ellis, Harry	Greenbrier	3	1 - 15 "
32911 Starkey, Dnnail G.	Harrison	3	1 - 15 "
32939 Napper, Norman	Wayne	3	1 - 15 "
32995 Fike, Theodore	Marion	4	2 - 10 "
32962 Vance, Jess	Clay	3	1 - 5 "
32977 Roberts, Jinks	Mercer	3	1 - 10 "
32985 Davis, Cecil	Mercer	3	1 - 3 "
32987 Dunking, Herbert	Wyoming	4	1 - 10 "
32990 Leasure, Hohn	Wood	3	1 - 15 "
32999 Gladwell, Sonnie	Kanawha	3	2 - 15 "
33032 Bechum, Randolph	Kanawha	3	1 - 5 "
33023 Dameron, Eugene	Ohio	3	1 - 10 "
33037 Simma, Audley	Kanawha	3	1 - 10 "
33009 Fink, Siles	Kanawha	3	5 - 18 "

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33039 Watts, Bee	Mercer	3	1 - 10 "
33044 Linkous, Noah H.	Mercer	4	1 - 10 "
33053 Huff, Lewis	McDowell	3	1 - 10 "
33058 Trippett, Harley B.	Harrison	3	1 - 15 "
33085 Swimm, Sherman	Cabell	3	2 - 10 "
33123 Huffman, C. C.	Kanawha	3	2 - 10 "
33131 Spencer, Edgar W.	Roane	3	1 - 10 "
33132 Talkington, H. W.	Roane	4	2 - 10 "
33140 Devonshire, Danel	Berkley	3	1 - 5 "
33147 Pauley, Elwin	Kanawha	3	1 - 5 "
33156 Congrova, George F.	Wood	4	2 - 10 "
33159 Scrotaky, Andrew	McDowell	3	5 "
33185 Federoff, Mike	Raleigh	3	1 - 5 "
33200 Lynn, Hugh	Ohio	3	20 "
33211 Minter, James L.	Cabell	3	1 - 5 "
33213 Hendrick, Oliver	Cabell	3	1 - 5 "
33217 Anderson, Bill	Mingo	3	10 "
33256 Cloxton, James H.	Summers	4	1 - 5 "
33318 Criss, George W.	Harrison	5	1 - 10 "
33351 Roberts, Wilber	Mercer	5	1 - 10 "
33399 Harmon, Gillespie	Summers	3	1 - 10 "
33441 Gilmore, Forrest O.	Raleigh	3	2 - 10 "
33453 Fletcher, Willard	Kanawha	4	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
33465 Royal, Edward L.	Fayette	4	1 - 10 Years
33479 Worstell, Herman	Harrison	3	1 - 10 "
33482 Munis, Sam	Hancock	3	10 "
33503 Acord, William H.	Mingo	3	10 "
33526 Dudley, W. H.	Fayette	4	1 - 10 "
33527 Dingess, Charlie	Marshall	3	5 "
33531 Starcher, Holly	Ohio	3	10 "
33570 Harmon, Thomas S.	McDowell	3	1 - 10 "
33571 Brennigan, John W.	McDowell	3	2 - 10 "
33586 Jackson, Edd	Randolph	5	2 - 10 "
33594 Richards, Otis A.	Wood	3	1 - 10 "
33616 Patriakie, Joe	Wayne	3	1 - 10 "
33623 Barnett, Barney	Kanawha	3	5 "
33631 Johnson, Moses	Kanawha	3	5 "
33655 Oshe, Charles A.	Wood	3	1 - 40 "
33670 Melver, Alfred	Harrison	3	1 - 10 "
33672 Steele, Wilson V.	Harrison	3	1 - 10 "
33678 Sheff, Raymey	Mingo	5	1 - 10 "
33685 Creasy, Charles D.	McDowell	4	1 - 10 "
33699 Myers, Earl J.	Berkley	4	2 - 10 "
33691 Wilt, Francis H.	Mineral	3	1 - 10 "
33709 Richardson, L. W.	Kanawha	4	2 - 10 "
33718 Ervin, Robert	Marion	4	1 - 10 "
33729 Wilson, W. E.	Ohio	5	2 - 10 "
33740 Kennedy, Elsworth	Cabell	3	1 - 10 "
33742 Vaughn, Herbert	Cabell	3	1 - 15 "
33745 Miller, Harry	Kanawha	3	1 - 10 "
33784 Price, Frank W.	Kanawha	4	5 "
33758 Crews, Walter L.	Mercer	3	1 - 15 "
33768 Jones, James K.	Logan	4	1 - 15 "
33793 Douglas, Jack	Fayette	7	1 - 15 "
33807 White, James	Ohio	5	1 - 15 "

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33812 Albright, Leonard W.	Mineral	3	1 - 10 "
33817 Miller, Fred T.	Wood	3	1 - 30 "
33855 Marcum, Luther	Logan	3	1 - 10 "
33856 McCoy, Earl	Logan	4	1 - 10 "
33876 Bailey, Robert B.	Kanawha	3	5 "
33877 Feathers, Cecil	Kanawha	3	1 - 10 "
33879 Parsons, Clarence W.	Kanawha	5	1 - 10 "
33888 Cooper, Ray	Kanawha	3	5 "
33897 Townsend, James	Mingo	4	1 - 10 "
33899 Ford, Clarence W.	Raleigh	3	1 - 15 "
33923 Clark, Carl R.	Raleigh	3	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
33934 Wise, Bill	Wert	3	1 - 10 Years
33957 Lyons, John	Mingo	4	2 - 10 "
33961 Clay, Oscar	Wood	3	1 - 10 "
33964 Belcher, Tony	Kanawha	3	1 - 10 "
33968 Wilson, Joe	Roane	3	1 - 10 "
34006 Hensley, Carl	Logan	3	2 - 10 "
34007 Adkins, Charlie	Logan	6	1 - 10 "
34013 Dolan, Clyde	Logan	3	1 - 10 "
34026 Doleman, James	Jefferson	3	1 - 10 "
34033 Ribinson, Rufus	Kanawha	3	5 - 18 "
34035 Underwood, Andrew	Kanawha	3	1 - 10 "
34062 Harshaw, William	Kanawha	3	1 - 15 "
34069 Simmons, George B.	Ohio	4	1 - 10 "
34074 Wilson, Donald	Ohio	3	1 - 18 "
34086 Grady, James E.	Wood	3	10 "
34088 Ruble, Everett L.	Wood	3	15 "
34116 Nelson, Tom	McDowell	5	1 - 10 "
34189 Barr, Thurman	Logan	3	2 - 15 "
34192 Miller, John	Logan	3	1 - 15 "
34201 Rogers, Lawrence E.	Berkley	3	1 - 15 "
34204 McKnight,	Greenbrier	3	1 - 10 "
34217 Terrell, Lawrence	Marshall	4	1 - 10 "
34226 Dunkley, Fred F.	Raleigh	3	1 - 15 "
34244 Cunningham, Roy	Kanawha	4	1 - 5 "
34255 Carver, Robert C.	Cabell	3	2 - 10 "
34262 Sowards, Opie	Mason	4	2 - 15 "
34294 Trest, W. H.	McDowell	3	1 - 5 "
34311 Strain, Nathaniel	Marion	3	1 - 15 "
34325 Smith, James	Logan	3	1 - 10 "
34328 Starks, Neal	Logan	4	1 - 10 "
34331 Cox, John	Logan	3	1 - 10 "
34394 Shears, William	Preston	3	2 - 10 "
34402 Adkinson, Clifford	Monongalia	3	1 - 10 "
34403 Bailey, Cecil A.	Lewis	4	1 - 5 "
34451 Stoepppeiani, A. J.	Kanawha	3	1 - 5 "
34466 Mace, Floyd D.	Kanawha	4	2 - 10 "
34470 Coffman, Oatha	Harrison	3	1 - 5 "
34483 Pearson, Hollis	Harrison	3	1 - 10 "
34487 Clegg, Harold F.	Harrison	3	2 - 10 "
34490 Davis, William R.	Wood	3	1 - 10 "
34497 McBride, Russell	Wood	3	10 "
34519 Dennison, Max Jr.	Cabell	3	2 - 10 "
34546 Colbert, Gene D.	Berkley	4	2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
34550 Graring, Lawrence E.	Mercer	3	1-10 Years
[fol. 58]			
34575 White, William	Roane	5	1-15 "
34584 Jones, James	Logan	3	1-5 "
34616 Elzy, Sam	Kanawha	3	1-10 "
34623 Tomlin, James	Kanawha	3	1-10 "
34647 Johnson, St Willie	Fayette	3	1-5 "
34670 Beasley, Frank	Cabell	3	2-15 "
34671 Butts, Joe	Cabell	3	1-15 "
34672 Bowen, Irvin	Cabell	3	1-15 "
34675 Emert, Clarence	Cabell	3	2-15 "
34694 Ayersman, Everett L.	Monongalia	3	1-10 "
34706 Searberry, Joseph E.	Wood	3	1-10 "
34721 Smith, John D.	Jefferson	3	1-10 "
34730 Tuber, Clayton L.	Mercer	3	1-10 "
34739 Thompson, Aubrey	Mercer	3	1-10 "
34771 Salisbury, J. D.	Monongalia	3	1-10 "
34787 Hayes, Robert	Marion	3	5 "
34825 Hawthorn, Orville	Wirt	3	1-10 "
34857 Willard, Charles W.	Raleigh	4	2-10 "
34859 Miller, William	Marshall	3	1-10 "
34878 Adkins, Noah	Wayne	3	2-10 "
34884 Day, Tom	Cabell	4	1-10 "
34885 Wilson, Cos	Cabell	3	1-10 "
34898 Kochenderfer, George	Cabell	3	2-10 "
34899 Motter, Henry	Cabell	3	2-15 "
34901 Tomlin, Howard W.	Cabell	4	1-5 "
34902 Shaffer, Jones	Putnam	3	1-10 "
34909 Hedrick, Ralph	Raleigh	3	10 "
34915 Knisley, Dale	Roane	4	1-10 "
34916 Lipscomb, Howard	Jefferson	4	1-15 "
34922 Weaver, Albert L.	Harrison	4	1-5 "
34928 Kelly, Harlan	Roane	3	2-10 "
34935 Kendall, Leland V.	Mercer	3	1-10 "
34939 Blankenship, Walter	Wyoming	3	1-10 "
34960 Watt, Everett H.	Logan	4	2-10 "
35004 Hughes, James P.	Putnam	3	2-10 "
35044 Cox, John	Logan	3	1-10 "
35045 Dolan, James	Jefferson	3	1-10 "
35076 McCoy, Mont	Cabell	3	2-10 "
35083 Jordan, Cecil	Cabell	5	1-15 "
35084 Cobb, Orville E.	Kanawha	4	2-10 "
35095 Booth, Harry L.	Kanawha	3	2-10 "
35100 Paulry, James E.	Kanawha	3	2-10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
35106 Brown, Alfred R.	Kanawha	3	1 - 10 Years
35109 Elswick, Robert	Kanawha	4	1 - 10 "
35111 Hall, Charles R.	Kanawha	3	1 - 15 "
35117 Westfall, Clayton	Kanawha	3	1 - 10 "
35124 Whiteside, Zech	Wetzel	3	1 - 15 "
35127 Goodman, William Q.	Wood	3	2 - 10 "
35145 Sprouse, Ernest A.	Wood	4	1 - 10 "
35146 Dunn, Foster E.	Wood	3	2 - 10 "
35155 Hines, Everett L.	Preston	3	1 - 10 "
35162 Thompson, Harold	McDowell	5	1 - 10 "
35183 Erb, James E.	Wood	3	2 - 10 "
35194 Hunter, Henry P.	Marion	3	1 - 15 "
35250 Gatewood, Frederick	Raleigh	3	1 - 10 "

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35252 Hull, Raymond J.	Harrison	3	2 - 10 "
35264 Crum, John	Kanawha	5	1 - 10 "
35276 Page, Harold	Kanawha	3	2 - 10 "
35284 Scott, Harold C.	Kanawha	5	2 - 10 "
35296 Alderman, Donald F.	Monroe	4	1 - 10 "
35324 Stanley, Curtis	Mingo	4	5 "
35337 Jones, Granville D.	Wood	5	1 - 10 "
35347 Edwards, David L.	Wood	4	1 - 10 "
35398 Smith, Belford E.	Cabell	4	1 - 10 "
35404 Aubille, Jesse	McDowell	3	1 - 5 "
35411 Davis, Matthew	McDowell	3	5 "
35420 Warfo, William	Mercer	3	1 - 10 "
35461 Lucas, Wiley F.	Marion	5	1 - 5 "
35480 Taylor, Edward	Wood	3	1 - 10 "
35484 Mason, Billie	Berkley	3	1 - 10 "
35489 Neigh, Walter L.	Tucker	3	2 - 10 "
35506 Baily, Victor	Kanawha	5	1 - 15 "
35502 Young, Vernon	Mingo	4	1 - 10 "
35506 Collins, Fred	Mercer	5	1 - 10 "
35597 Ball, William	Mercer	4	2 - 10 "
35627 Williams, Don C.	Greenbrier	3	1 - 10 "
35636 Worles, Pearl	Summers	3	1 - 10 "
35644 Hickman, Luther Jr.	Webster	3	5 - 20 "
35646 Criss, Cecil	Roane	4	1 - 10 "
35653 Porter, Joseph	Jefferson	4	2 - 10 "
35664 Hagan, John V.	Jefferson	3	2 - 10 "
35666 Ward, James	Wyoming	3	1 - 10 "
35681 Cross, Clifford R.	Wood	4	1 - 10 "
35670 Knight, Gerald	Roane	3	1 - 5 "
35684 Mounts, John	Mingo	3	1 - 10 "
35688 Stockton, Charlie	Mingo	4	5 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
35706 Hall, Chris F.	Kanawha	3	1-10 Years
35762 Basham, Paul E.	Kanawha	3	1-10 "
35790 Bush, James	Greenbrier	3	2-10 "
35796 Clogg, Harold F.	Harrison	3	2-10 "
35811 Adkins, Roy R.	Kanawha	3	1-10 "
35815 Boggess, Mansford	Kanawha	3	1-5 "
35824 Brown, Hunter	Wetzel	6	1-15 "
35864 Charlton, Reid	Raleigh	3	2-10 "
35868 Williamson, J. C.	Mingo	3	1-10 "
35882 Florence, Ray	Wood	3	2-10 "
35885 Hamrick, Milton	Harrison	3	1-10 "
35916 McElfresh, Cecil O.	Harrison	3	1-10 "
35920 Price, John H.	McDowell	3	1-10 "
35927 Cleaver, George	McDowell	4	1-10 "
35994 Boggs, Thurman	Harrison	5	2-10 "
35998 Adkins, Vernon	Kanawha	3	1-10 "
35999 Collins, Earl	Cabell	3	1-10 "
36001 Foster, Ray M.	Cabell	3	1-10 "
36003 Gibson, James H.	Cabell	3	1-5 "
36028 Hyer, C. R.	Cabell	3	1-10 "
36032 Johnson, Pate	Cabell	5	1-10 "
36038 Swim, Sherman	Wayne	3	1-10 "

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36063 Chambers, Guy	Greenbrier	3	2-10 "
36071 Wilbur, John W.	Monongalia	3	1-5 "
36077 Jones, Robert L.	Ohio	3	1-20 "
36111 Blevins, Ernest	Mingo	4	1-10 "
36121 Sizemore, Jack	Mingo	3	2-10 "
36153 Stallings, Thomas	Berkley	3	2-10 "
36160 Miller, John	Logan	3	1-15 "
36161 Eplin, Howard	Kanawha	3	5 "
36185 Day, Dewey	Logan	6	1-15 "
36210 Searberry, John	Wood	3	1-10 "
36219 Pifer, M. Jackson	Upshur	3	2-10 "
36225 Star, Thomas	Monongalia	3	1-10 "
36228 Smith, Homer	Cabell	5	2-15 "
36233 Lincoas, Howard	Mercer	5	2-10 "
36259 Jackson, Benjiman	Marion	3	5-23 "
36264 Vincent, James W.	Marion	3	1-15 "
36285 McCoy, Burton H.	Berkley	3	2-15 "
36290 Roberts, Jinks	Mercer	3	1-10 "
36290 Meade, Tom	Fayette	4	1-10 "
36330 Kidd, Escl	Kanawha	3	1-10 "
36365 Kinkle, J. V.	Cabell	4	1-5 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
36385 Artia, Henry	McDowell	5	2 - 10 Years
36402 Hall, William	Wood	3	1 - 10 "
36419 Matheny, Hubert O.	Preston	3	1 - 15 "
36420 Coleman, Harley	Mineral	3	2 - 10 "
36431 Clarke, John	Kanawha	3	5 "
36434 Garrett, Owen	Kanawha	3	1 - 15 "
36442 Ramsey, Richard	Kanawha	3	1 - 10 "
36476 Brown, Bruce	Raleigh	4	1 - 10 "
36485 Fuller, James H.	Raleigh	3	1 - 10 "
36509 Fisher, Calvin	Fayette	3	1 - 10 "
36512 Chrisholm, Frank	Cabell	3	1 - 10 "
36524 Sweeny, John	Cabell	3	1 - 15 "
36531 Davis, Charles	Logan	3	1 - 15 "
36539 Pollard, Willard	Logan	3	1 - 10 "
36552 Stover, C. E. Jr.	Kanawha	3	1 - 10 "
36561 Maryland, Harry	Greenbrier	3	1 - 15 "
36564 Sandlin, Chester	Greenbrier	3	10 "
36569 Harshaw, William	Kanawha	3	1 - 15 "
36584 Lark, Kenneth	Kanawha	3	1 - 10 "
36601 Null, Milford D.	Kanawha	3	1 - 10 "
36609 Johnson, Richard	Wayne	3	1 - 10 "
36610 Burnette, George Jr.	Wayne	3	1 - 10 "
36617 Davis, Wolvin H.	Logan	3	1 - 10 "
36685 Bess, Berkley	Kanawha	4	3 "
36661 Moody, Arthur E.	Wood	3	1 - 10 "
36664 Wilson, Christopher	Wood	4	2 - 10 "
36700 Runyon, Charles	Ohio	3	2 - 10 "
36736 Imes, Ralph	Kanawha	3	1 - 15 "
36745 Woodrum, Raymond H.	Kanawha	3	2 - 10 "
36753 Beason, Claude H.	Monongalia	6	2 - 10 "
36755 Lemons, John	Monongalia	3	1 - 10 "
36780 Betts, Joe	Cabell	3	1 - 15 "
36798 Greer, Sabford W.	Raleigh	4	1 - 15 "
36852 Spencer, Edgar	Braxton	4	1 - 5 "
36874 Nesselroad, William	Wood	5	1 - 5 "

[fol. 61]

36983 Belcher, Thomas	Cabell	3	2 - 10 "
36888 Dill, Fernard	Cabell	4	1 - 20 "
36890 Cryber, Bamsay Jr.	Cabell	5	10 "
36892 Hull, Lonnie	Cabell	4	2 - 10 "
36895 Lyons, Homer	Cabell	3	1 - 10 "
36950 Adkins, B. F.	Summers	3	1 - 5 "
36957 Dean, George H.	Logan	3	1 - 10 "
37005 Cranford, James	Mineral	3	2 - 10 "

MICRO CARD

— TRADE MARK 

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microcard

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Name & WVP Number	County	Prior Convictions	Term of Sentence
37310 Wheeler, P. A.	Cabell	6	2-10 Years
37357 Cooper, James	Mingo	3	10 "
37377 Mercer, James H.	Tyler	3	1-10 "
37115 Caldwell, James	Logan	3	1-5 "
37126 Wilson, Truman	Cabell	3	1-15 "
37206 Sparks, Robert	Ohio	5	2-10 "
37297 Huffman, Charles C.	Ohio	4	1-5 "
37260 Fisher, Charles	Marshall	3	1-15 "
37297 Hansen, Frank	Ohio	3	2-10 "
37232 McCoy, Curtis	Wyoming	4	1-5 "
37262 Black, Keith	Kanawha	3	1-10 "
37261 Cash, Leavil L.	Kanawha	3	1-10 "
37264 Shaffer, Owen	Kanawha	3	1-15 "
37255 Oomsburg, Edward	Kanawha	6	2-15 "
37368 Gales, Robert	Kanawha	7	2-10 "
37413 Taylor, Robert Jr.	Raleigh	3	1-10 "
37489 Phillips, Otis L.	Fayette	3	2-10 "
37459 Smith, Robert L.	Kanawha	4	1-5 "
37482 Kinney, Walter L.	Kanawha	6	1-5 "
37473 Tyler, L. H.	Mercer	4	2-10 "
37475 Taylor, Robert	Mercer	4	1-10 "
37489 Pukley, Ivan J.	Wood	5	2-10 "
37550 Fulton, Edwin	Brooke	3	1-10 "
37561 Phillips, Howard	Barbour	3	1-10 "
37625 Sherwood, Curtis	Raleigh	3	1-10 "
37674 Diken, Henry	Kanawha	3	1-10 "
37664 Jorgensen, Wendon	Kanawha	3	1-10 "
37684 Hensley, Hal V.	Kanawha	3	2-10 "
37722 Dalton, Houston	Taylor	3	2-20 "
37740 Hulthofield, Albert	Ohio	3	2-10 "
37744 Johnson, Pink E.	Kanawha	4	1-10 "
37767 Taylor, Joe E.	Kanawha	3	1-10 "
37769 Steele, Leon	Kanawha	3	1-5 "
37761 Welch, Gail	Fayette	3	1-10 "
37775 Wedemeyer, F.	Fertley	3	1-10 "
37804 Greeny, John	Cabell	3	2-10 "
37806 Craven, Edward	Cabell	3	2-10 "
37860 Rice, Franklin	Raleigh	4	1-5 "
37829 Sweeney, Andrew	Mingo	4	1-10 "
37802 Gibson, William	Mercer	4	1-5 "
37885 Graves, William	Kanawha	3	2-10 "
37902 Yates, R. E.	Cabell	4	2-10 "
37967 White, William	Clay	4	1-5 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
37994 Starcher, Lester	Wood	3	1 - 10 Years
38034 McCoy, M. F.	Mingo	3	1 - 5 "
37057 Brennin, John	Mercer	3	2 - 15 "
[fol. 62]			
38074 Plaster, James	Tucker	3	1 - 15 "
38100 Hill, Ferris E.	Kanawha	3	2 - 10 "
38002 Pater, Robert	Kanawha	5	1 - 5 "
38227 Stewart, John	Marion	3	1 - 10 "
38246 Johnson, Charles	Berkley	3	5 "
38258 Wheeler, Doyle	Putnam	3	5 "
38261 Gladwell, Sonny P.	Wetzel	3	2 - 15 "
38269 Wilson, Clyde	Kanawha	3	1 - 10 "
38385 Nichols, Clyde	Kanawha	3	2 - 10 "
38392 Stewart, Robert	Ohio	3	1 - 10 "
38344 Bowen, Jim	Wayne	3	5 "
38370 Layne, Fred J.	Ohio	3	2 - 10 "
38380 Davis, Alvin	Marshall	3	1 "
38386 Ealy, Carl T.	Fayette	4	1 - 10 "
38397 Jones, D. C.	Wood	3	1 - 5 "
38420 Harmon, Lem.	Kanawha	3	1 - 10 "
38438 Jasper, William S.	Kanawha	3	2 - 5 "
38394 Bevins, Beachel W.	Lewis	3	2 - 10 "
38445 Perry, Fred	Cabell	5	1 - 10 "
38447 Woods, James C.	Fayette	3	1 - 10 "
38475 Waters, Cliff	Cabell	3	1 - 5 "
38493 Perkins, Fred	Wayne	3	1 - 10 "
38514 Myers, Milt	Mercer	3	1 "
38527 Ayers, Sameul	Marshall	4	5 "
38566 Thompson, Aubrey	Upshur	3	1 - 15 "
38568 Swin, Jake	Cabell	3	1 - 10 "
38627 Smith, Albert	Fayette	3	1 - 10 "
38664 Jones, Willie	Kanawha	4	1 - 15 "
38690 Bright, C. C.	Kanawha	3	2 - 10 "
38694 McFarland, Sherman	Kanawha	3	1 - 10 "
38750 McComas, Raymond	Marion	4	1 - 5 "
38772 Starcher, Berlin	Wood	3	1 - 15 "
38794 Willford, John H.	Mercer	5	1 - 5 "
39275 Shifflet, John H.	Berkley	3	1 - 5 "
39625 Hammitt, Arthur	Logan	3	1 - 10 "
39641 Mayse, Odie B.	Barbour	3	1 - 10 "
39651 Mamey, Joe	Wyoming	3	1 - 10 "
39395 Meadows, Willie F.	Kanawha	3	1 - 10 "

SEE: Statistics on Habitual Lifer—next page.

[fol. 63]

The following Named Inmates are those that were sentenced to life on the Habitual Criminal act to the West Virginia Penitentiary, from 1940 to June 3, 1955.

Figured in the Statistical averages: 1940 to June 1955.

30788	Ables, Mike	Gilmer	30440	Hunter, Pearl L.	Cabell
33016	Adkins, Leo	Cabell	40126	Jernell, William	Mineral
33852	Arbough, Larry	Ohio	32321	Jackson, Neal	Harrison
31511	Ashworth, Lee	Lincoln	39517	Johnson, Nathan	McDowell
39308	Barker, Robert M.	Lewis	39310	Jorgenson, Weldon	Wetzel
33649	Barhart, John	Wood	37296	Justice, Matt	McDowell
31234	Beaham, Lawrence E.	Raleigh	39003	Lovejoy, Ronesford	Logan
40086	Blankenship, Walter	McDowell	38871	Martin, Charles W.	Kanawha
35324	Blankenship, Vurgis	Logan	32961	Meadows, William	Clay
31698	Braxton, Arvon	Randolph	31793	Moore, Stanley	Cabell
39668	Browning, Benny	Logan	37236	Murray, Carl	Harrison
34901	Brunner, William H.	Cabell	34551	Neal, Henry	Ohio
33018	Bullet, James	Morgan	39089	Neff, Otto	Calhoun
33728	Cannon, Raymond	Ohio	32210	Newman, Elmer	Barbour
33792	Carr, Joseph D.	Ohio	35223	Nicholson, Jess	Lewis
37078	Chambers, Kilrain	Nichols	38790	Oyler, James	Taylor
38443	Clark, Robert	Harrison	31469	Pauley, Alva	Kanawha
35838	Coburn, Melvin	Ohio	36488	Pee, Harold	Harrison
35418	Coco, Dominic	Marshall	37688	Rosmiter, Arthur	Ohio
33906	Cowley, Charlie	Logan	35831	Scaif, Lee	Raleigh
32123	Cormack, Donald B.	Raleigh	35735	Scruggs, James	McDowell
30794	Daughtary, Henry	McDowell	57777	Shanton, Lawrence	Berkley
32494	Davis, John H.	Raleigh	32138	Sheftic, Stanley	Hancock
39808	Dayton, Robert	Berkley	34106	Spouse, George	Wood
39312	Dobbins, Spencer	Braxton	39001	Dpty, Vhstles F.	Logan
34838	Dotson, Clarence	Fayette	30206	Steele, Kelly	Raleigh
35647	Dunbar, Arnold	Jackson	30668	Thomas, Frank L.	Whoming
31387	Eddins, Earl	Upshur	39471	Tichnel, W Elmer	Marshall
38151	Estopp, Charley	Nichols	37606	Turner, Spurgan B.	McDowell
30447	Ferguson, Harry	Berkley	32002	Vlyke, John	Brooke
37720	Foley, Lee	Nichols	35682	Weidensall, William	Raleigh
32843	Garner, James K.	Logan	36210	White, John P.	Raleigh
30086	Giles, George	Marion	39535	Whytsell, Simon	Calhoun
34078	Gilliam, Crumpton	Wayne	34238	Widmyer, Edwin G.	Morgan
36567	Greer, Milliard	McDowell	39323	Wolford, Woodrow	McDowell
37391	Hall, Carl	Calhoun	34278	Wolverton, Donail	Harrison
34030	Heiny, Jack	Harrison	36297	Wright, James S.	Mason
30977	Hicklin, William	Fayette	32867	Knott, Clifford	Mason
35290	Hobbs, Loren E.	Raleigh	35735	Poindester, James	McDowell

Total 79

Above still here as of June 1955

1 released, but 1 returned.

Not figured in averages;

Habitual Lifers, still here and received before 1940 1 10

Habituals Lifers, here and received since June, as of Sept. 1955 2

Total 12

Total number of Habitual Lifers still here as of Sept. 1955 91

[fol. 64]

STTISTICAL RECAPITULATION FROM THE FOREGOING DATA

By Counties; Number of men from the various Counties convicted and sentenced to the West Virginia State Penitentiary; all having been subject to a Life Sentence under meaning of the State Habitual Criminal Act, from the year of 1940 to June 3, 1955:

County	Sentenced to Less than Life	Sentenced To Life	County	Sentenced to Less than Life	Sentenced To Life
Barbour	6	1	Mineral	41	1
Berkley	18	3	Mingo	23	0
Boone	3	0	Monogalia	17	0
Braxton	8	1	Monroe	1	0
Broke	9	1	Morgan	3	2
Cabell	100	4	Nicholas	3	3
Calhoun	3	3	Ohio	27	7
Clay	2	1	Pendleton	1	0
Doddridge	1	0	Pocahontas	5	0
Fayette	20	2	Preston	6	0
Gilmer	1	1	Putnam	8	0
Grant	3	0	Pleasants	0	0
Greenbrier	13	0	Raleigh	37	8
Hampshire	1	0	Randolph	8	1
Hancock	1	1	Ritchie	1	0
Hardy	2	0	Roane	9	0
Harrison	46	6	Summers	15	0
Jackson	2	1	Taylor	6	1
Jefferson	11	0	Tucker	3	0
Kanawha	191	2	Tyler	3	0
Lewis	4	2	Upshur	3	1
Lincoln	4	1	Wayne	16	1
Logan	43	6	Webster	6	0
Marion	22	1	Wetzel	7	1
Marshall	10	2	Wirt	2	0
Mason	8	2	Wood	55	2
McDowell	41	9	Wyoming	12	1
Mercer	45	0			

TOTAL: Sentenced to less than life 904
 TOTAL: Sentenced to life 79
 TOTAL: Subject to a life sentence 983

Recap:

Total Sentenced to less than life in this period, but subject to same: 904
 Total Prisoners actually receiving life in this period 79
 Total number of prisoners received WVP subject to a life sentence 983
 Approximate total still here of this period receiving less than life: 300
 Approximat total thats been released in this period receiving less than life. 600
 Ratio of discrimination 11 to 1

[fol. 65]

IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Habeas Corpus

STATE OF WEST VIRGINIA EX REL. JAMES W. OYLER

VS.

D. E. ADAMS, Warden, West Virginia Penitentiary

ORDER REFUSING PETITION FOR WRIT OF HABEAS CORPUS—
June 6, 1960

On a former day, to-wit, May 26, 1960, came the petitioner, James W. Oyler, in person, and presented to the Court his petition, and exhibits, and pauper's affidavit, praying for a writ of habeas corpus ad subjiciendum to be directed to D. E. Adams, Warden, West Virginia Penitentiary, commanding him to produce the body of James W. Oyler, before this Court, and show cause, if any he can, why he detains said petitioner of and from his liberty. Upon consideration whereof, the Court is of opinion to and doth refuse the writ prayed for by the petitioner in his said petition.

[fol. 66]

Clerk's Certificate to foregoing
transcript omitted in printing

[fol. 67] **SUPREME COURT OF THE
UNITED STATES**

No. 159 Misc., October Term, 1960

JAMES W. OYLER, PETITIONER

VS.

D. E. ADAMS, Warden

**ON PETITION FOR WRIT OF CERTIORARI to the Supreme
Court of Appeals of the State of West Virginia.**

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND GRANTING PETITION FOR WRIT OF
CERTIORARI—February 20, 1961**

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, and the case is transferred to the appellate docket as No. 746. The case is consolidated with No. 747 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

February 20, 1961

TRANSCRIPT

OF

RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 57

PAUL H. CRABTREE, PETITIONER

vs.

OTTO C. BOLES, WARDEN

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

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[fol. 1]

**IN THE SUPREME COURT OF APPEALS OF
WEST VIRGINIA CHARLESTON**

STATE OF WEST VIRGINIA, EX REL:

PAUL HOMER CRABTREE, PETITIONER

v.

**B. E. ADAMS, WARDEN, WEST VIRGINIA PENITENTIARY,
MOUNDSVILLE, WEST VIRGINIA, RESPONDENT**

[fol. 2]

NOTICE OF MOTION FOR APPEAL

**Mr. Kenneth E. Hines, Clerk
Supreme Court of Appeals
Charleston, West Virginia.**

Dear Sir:

**May this serve as advance notice of Motion for Appeal
to the Supreme Court of the United States, should this
petition be refused or denied by this the Supreme Court
of Appeals of West Virginia.**

**May this also serve as a request for a copy of the
petition filed, and a copy of the Courts denial order.**

Respectfully yours

**/s/ Paul Homer Crabtree
Petitioner**

[fol. 3]

[fol. 4]

**IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MOTION FOR APPOINTMENT OF COUNSEL

The petitioner is a pauper, unable to pay counsel to represent him and therefore, the petitioner respectfully requests that the honorable Supreme Court of Appeals of West Virginia, appoint counsel to represent him.

Respectfully submitted

/s/ Paul Homer Crabtree
Petitioner

[fol. 5]

AFFIDAVIT

I, Paul Homer Crabtree, hereby swear that, all the allegations made by me, in my Petition for a Writ of Habeas Corpus are true facts.

/s/ Paul Homer Crabtree
Affiant

STATE OF WEST VIRGINIA)
COUNTY OF MARSHALL) SS

Taken, sworn to and subscribed before me this 28 day of June 1960 AD.

(SEAL)

/s/ Elinore Kirby
Notary Public

My commission expires May 31, 1967 AD.

[fol. 6]

IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

PETITION FOR WRIT OF HABEAS CORPUS

*To the Honorable Judges of the Supreme Court of
Appeals of West Virginia*

Your petitioner respectfully represents that at the November, 1957, term of the Circuit Court of Lincoln County, West Virginia he was indicted for Forgery.

On November 13, 1957, Petitioner entered a plea of guilty to the charge of forgery, and sentence of 2 to 10 years was not imposed and thereafter.

On November 20th 1957, the Prosecuting Attorney set forth a bill of Information to the effect that petitioner had twice before been convicted as required by Chapter 61, Article II, Section 18 and 19 of the West Virginia Code.

The information states that the petitioner was tried and sentenced in the Criminal Court of Walla Walla State of Washington, said charge in the Information is false, in that the evidence presented with this petition affirmatively proves that there is no record of petitioner having ever convicted of any charge in the said Walla Walla Court.

Petitioner had no prior notice that he would be prosecuted as an Habitual Criminal and had petitioner been properly informed he could have obtained proof to establish the fact that he had never been Convicted in the said Walla Walla Court.

Petitioner did not realize that if he admitted to being formerly convicted that he would in effect be entering a plea of guilty to a mandatory Life sentence.

It is a matter of record that the Habitual Criminal Statute as construed by the West Virginia Supreme Court of Appeals, are Unconstitutional, in that said Statute do not require or provide for pretrial notice to the accused.

The said Statute are administered and applied in such a manner as to be in violation of Equal Protection and Equal Justice therefor in conflict with the Fourteenth Amendment to the Constitution of the United States.

4

Petitioners present confinement in the West Virginia Penitentiary by virtue of the information herein referred to, is illegal and unconstitutional in that the proceeding effected against him does not conform to the concept of Due Process and equal protection, and therefor is in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 7] There is presented herewith certain affidavits and motions required by law, and certified records of the within mentioned proceeding, and other documents and papers in proof of the allegations made herein, all are offered as a part of this petition.

Wherein your petitioner prays that a Writ of Habeas Corpus be granted and that he be restored to his liberty.

Respectfully Submitted

/s/ Paul Homer Crabtree
Petitioner

[fol. 8]

POINTS AND AUTHORITIES RELIED UPON

#1. Petitioner was denied Due Process of law in that he was not informed prior to trial, as to what the charge against him would be.

#2. The information filed by the Prosecuting Attorney is false and void in that the evidence clearly shows petitioner was never convicted and sentenced in Walla Walla Courts of Washington and said information alleges that said Walla Walla Court action is against the peace and dignity of West Virginia.

#3. The Statute under which petitioner was sentenced is void, in that it is in conflict with the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

#1. The Statute under which petitioner was convicted are void, in that said Statute are in conflict with the

Equal Protective Clause of the Fourteenth Amendment to the Constitution of the United States.

#5. The Fourteenth Amendment to the Constitution requires that: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States, and the State, wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the Citizens of the United States, nor shall any State deprive any person of life, liberty, or property without Due Process of law, nor deny to any one within its jurisdiction the Equal protection of the law.

Petitioner presents confinement in the West Virginia Penitentiary by D. E. Adams, Warden, thereof is illegal, unlawful, and contrary to the Fourteenth Amendment to the Constitution of the United States.

Wherefor your petitioner, respectfully requests that a writ of Habeas Corpus be granted and that he be restored to his Liberty.

Respectfully Submitted

**/s/ Paul Homer Crabtree
Petitioner**

[fol. 9]

EXHIBIT "1" TO PETITION

COUNTY OF WALLA WALLA
STATE OF WASHINGTONOFFICE OF THE COUNTY CLERK
WALLA WALLA, WASHINGTONRoberta Lucas
ClerkCatherine Williams
Chief Deputy

NOVEMBER 3, 1959

Paul H. Crabtree
818 Jefferson Avenue
Moundsville, West Virginia

Dear Mr. Crabtree:

In answer to your letter of November 3, 1959 asking of any convictions or sentences you may have received from this Court.

We have checked our records and do not have record of you at all.

Verry truly yours

ROBERT LUCAS, County Clerk

BY POLLY VIGNERON

Polly Vigneron, Deputy

[fol. 10] EXHIBIT "2" TO PETITION
IN THE CIRCUIT COURT OF LINCOLN COUNTY,
WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

PAUL HOMER CRABTREE

UPON INFORMATION OF FORMER SENTENCE
TO PENITENTIARY

BE IT REMEMBERED that R. A. Woodall, Prosecuting Attorney of Lincoln County, West Virginia, and who in this behalf prosecutes for the said State, in his proper person, comes into this Circuit Court of Lincoln County, West Virginia, and here gives to said Court to understand and be informed:

(1) That Paul Homer Crabtree was on the 19th day of July, 1954, arranged before the Criminal Court of Walla Walla State of Washington for the crime of Forgery in the first degree; that thereafter on the 19th day of July, 1954, the Court did sentence the said Paul Homer Crabtree to an indeterminate sentence of not more than 20 years in the Washington State Penitentiary; that thereafter on February 18, 1957, the said Paul Homer Crabtree was paroled.

(2) That Paul Homer Crabtree was indicted by the grand jury of Cabell County, West Virginia at a regular term of said Court in 1947, by which said indictment he was charged with a felony, to wit: uttering a forged check; that on the 18th day of February 1947 the said Paul Homer Crabtree was arraigned on said indictment and entered a plea of not guilty to said indictment; whereupon pursuant to said plea the Paul Homer Crabtree was therefore, to wit: on February 18th, 1947, duly and properly tried by a jury selected in accordance with Statutory provisions and found guilty of same; whereupon pursuant to said finding the said Paul Homer Crabtree was on the 14th day of March, 1947, by the Judge

of the Common Pleas Court of Cabell County, West Virginia, sentence of from 1 to 5 years in the West Virginia State Penitentiary, at Moundsville, West Virginia.

[fol. 11] (3) That the said Paul Homer Crabtree was indicted on the 12th day of November, 1957, by the grand jury of Lincoln County, West Virginia, by which said indictment he was charged with the commission of a felony, to wit; uttering a forged check; that on November 13, 1957, the said Paul Homer Crabtree was arraigned on said indictment in said Court and entered a plea of guilty to said indictment.

All of which the undersigned Prosecuting Attorney says was against the peace and dignity of the State.

Prosecuting Attorney of Lincoln
County, West Virginia.

STATE OF WEST VIRGINIA
COUNTY OF LINCOLN, to-wit:

R. A. WOODALL, Prosecuting Attorney of Lincoln County, West Virginia, the relator named in the foregoing information, being first duly sworn, says that the facts and allegations therein contained are true except in so far as therein stated to be upon information and belief, and that in so far as therein stated to be upon information and belief, he believes them to be true.

Taken, subscribed and sworn to before me, a Notary Public this 18th day of November, 1957.

My commission expires June 10, 1965.

Notary Public

[fol. 12] EXHIBIT "3" TO PETITION
IN THE CIRCUIT COURT OF LINCOLN COUNTY,
WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

PAUL HOMER CRABTREE

This day came the State of West Virginia, by her Prosecuting Attorney for Lincoln County, West Virginia, and came like-wise the defendant in proper person and by Houston A. Smith, his counsel, and thereupon the defendant was set to the bar of the Court in the custody of the Sheriff.

Thereupon the Court by her Prosecuting Attorney tendered and asked leave to file an information against said defendant in accordance with the Statute in such case made and provided and the Court perceiving that this is a proper case for the filing of such information, did order the same filed.

Thereupon the Court in accordance with the statute in case made and provided, duly cautioned the defendant as to his rights to have a jury trial upon the issue of his identity, as to whether or not he is the same person as named and described in such information; and thereafter inquired of said defendant whether or not he is the same person as that named in the information filed herein as aforesaid. Whereupon the defendant, after having been duly cautioned as aforesaid that if he acknowledged in person in open Court that he is the same person as that named and described in such information herein as aforesaid, that the Court was required to sentence him to further confinement as prescribed by Statute on a third conviction, did in open Court acknowledge as shown by the record herein, that he is the same person named in the information filed by the Prosecuting Attorney and that he is the same person duely and legally sentenced to imprisonment in the State of Washington for a term of not more than 20 years; that he is the same person duly sentenced by the Common Pleas Court of Cabell

County in the West Virginia State Penitentiary at Moundsville, West Virginia, for the term and period of [fol. 13] not less than 1 nor more than five years, all being felonies.

It appearing to the Court that the said defendant has been twice before convicted in the United States of a crime punishable by confinement in the penitentiary and that this is a proper case under the Statute in such case made and provided to impose a judgment of life imprisonment against the defendant in accordance with the information filed herein by the Prosecuting Attorney: it was thereupon demanded of the said Paul Homer Crabtree if anything he had or knew to say why the Court should not now proceed to pronounce sentence of the law against him and nothing being offered or alleged in the delaying of judgment, it is considered by the Court that the said defendant be confined in the penitentiary of this State for the rest of his natural life, and that the proper officers do as soon as practicable remove and safely convey the said Paul Homer Crabtree, defended herein, from the jail of this County to the penitentiary of this State, there to be kept imprisoned and treated in the manner prescribed by law.

Whereupon the prisoner was remanded to jail.

ORDER

ENTER: /s/ K. K. Hall
Judge

STATE OF WEST VIRGINIA
COUNTY OF LINCOLN, to-wit:

I, George Chandler, Jr., Clerk of the Circuit Court of Hamlin, West Virginia, do hereby certify that this is a true copy of the Court Order Entered in law Order Book no. 26, at page 399, as of the 20th day of November, 1957.

This 18th day of September, 1959.

/s/ George Chandler, Jr., Clerk
BY: ALVEN CHANEY, Deputy

[fol. 14]

EXHIBIT "4" TO PETITION

A CERTIFIED COPY (FORGERY)

STATE OF WEST VIRGINIA

County of Lincoln, To-Wit;

IN THE CIRCUIT COURT OF SAID LINCOLN
COUNTY.

The Grand Jurors of the State of West Virginia, in and for the body of the County of Lincoln and now attending said Court, upon their oaths present:

THAT PAUL HOMER CRABTREE on the 15th day of July 1957 in the said County of Lincoln, did unlawfully and feloniously forge a certain writing on, paper, commonly called a check, of the following tenor, purport and effect, to-wit:

Hamlin, West Virginia, July 15, 1957
THE LINCOLN NATIONAL BANK

PAY TO THE ORDER OF

Paul Homer Crabtree \$35.00/100
Thirty five Dollars

For

/s/ Shannon Adkins

Which said writing on paper, commonly called a check was endorsed on the back thereof as follows, to-wit: Paul Crabtree, Paul Johnson to the prejudice of another's right, with entent then and there unlawfully and feloniously to defraud, against the peace and dignity of the State.

SECOND COUNT:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said Paul Homer Crabtree, on the 15th day of July 1957, in the said County of Lincoln, then and there having in his possession a

certain forged writing on paper, commonly called a check, of the following tenor, purport and effect, to-wit:

Hamlin, West Virginia, July 15, 1957
THE LINCOLN NATIONAL BANK

PAY TO THE ORDER OF

Paul Homer Crabtree \$35.00/00
Thirty five Dollars

For

/s/ Shannon Adkins

[fol. 15] Which said writing on paper, commonly called a check, was endorsed on the back thereof as follows, to-wit: Paul homer Crabtree, Paul Johnson did then and there, in the County aforesaid, on the day and year aforesaid, the said forged writing on paper, commonly called a check, then and there unlawfully and feloniously utter and attempt to employ as true, he, the said Paul Homer Crabtree then and there well knowing the said forged writing on paper, commonly called a check to be then and there forged, to the prejudice of another's right, and with intent then and unlawfully and feloniously to defraud, against the peace and dignity of the State.

Found upon the testimony of C. T. Brammer duly sworn in open court to testify the truth, and sent before the Grand Jury, at the NOVEMBER term of said Court, 1957

/s/ R. A. Woodall

Prosecuting Attorney of Lincoln
County, West Va.

[fol. 16] EXHIBIT "5" TO PETITION

STATISTICAL DATA RE WEST VIRGINIA HABITUAL
CRIMINAL STATUTES

The document to which this is attached was compiled by civic leaders, for the purpose of presentation to the State Legislature, in an attempt to have the Habitual Criminal Statutes abolished, amended, or otherwise corrected.

This document was offered to the State Legislature in 1957, and one house voted in favor of abolishing, amending or correcting the Habitual Criminal Statutes but the issue was not pursued to a climax. This document is an exact copy of the original on file at the Capitol Building, Charleston, West Virginia, and was transcribed from Federal Bureau of Investigation records on file at the West Virginia Penitentiary.

[fol. 17]

AUTHENTIC STATISTICAL DATA, TRANSCRIBED FROM "F.B.I." REPORT, AND ON FILE AT THIS INSTITUTION, OF THOSE PRISONERS SENTENCED TO THE PENITENTIARY IN THE PERIOD FROM 1940 TO JUNE 1955, OF WHOM WERE SUBJECT TO A LIFE SENTENCE UNDER THE MEANING OF THE HABITUAL CRIMINAL ACT, BUT ACTUALLY RECEIVING SENTENCES OF LESSER PENALTY.

Name & WVP Number		County	Prior Convictions	Term of Sentence
30261	Blankenship, Sidney A.	Cabell	3	30 Years
30527	Stone, Warran R.	Cabell	3	1-10 "
31100	Swim, Linville	Cabell	6	30 "
31913	McClure, Elwood	Kanawha	4	2-10 "
32252	Higginbotham, Arlie	Kanawha	5	1-20 "
32617	Israel, Willie	Marion	3	1-30 "
32749	Powell, James	Cabell	3	2-10 "
33215	Meridith, James A.	Harrison	3	1-10 "
33309	Barbour, Burman	Mercer	3	2-10 "
33372	Linkensnager, Robert	Kanawha	3	2-10 "
33514	Myers, William	Kanawha	4	2-10 "
33775	Burnett, Joseph B.	Logan	4	1-20 "
33820	Lee, Alexander S.	Wood	6	2-20 "
33947	Armistead, Phillip	Monongalia	4	1-15 "
33979	Monore, Fred	Harrison	5	5-18 "
33993	Harmon, Thomas	McDowell	4	1-15 "
34033	Belcher, Bernard	Kanawha	3	15 "
34037	Brown, Charles	Kanawha	4	2-25 "
34077	Beharry, James J.	McDowell	5	1-10 "
34222	Dunkley, Fred F.	Fayette	3	1-15 "
34442	Walker, Lew	Kanawha	4	1-10 "
34501	Dingess, Brady	Logan	4	2-20 "
34603	Lewis, Thomas	Marshall	4	1-10 "
34675	Emert, George C.	Cabell	8	1-15 "
34696	Broadlove, George	Taylor	3	1-10 "
34803	Oaler, Richard	Kanawha	4	1-15 "
34819	Ratliff, Sherman T.	Kanawha	4	1-5 "
34907	Shelly, Paul	Wetzel	3	5-18 "
34967	Miller, Raymond	Kanawha	5	2-15 "
34970	Bibb, Edward	Harrison	3	2-10 "
35070	Spears, George	Cabell	4	1-15 "
35105	Boyd, Charles C.	Kanawha	3	1-15 "
35128	Myers, Roy Earl	Wood	4	1-15 "
35190	Napier, George	Jefferson	3	1-15 "
35254	Elswick, Lundy	Wyoming	3	1-10 "
35367	Tyner, James W.	Greenbrier	3	1-10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
35635 Vaughn, Leon	Summers	3	1 - 15 Years
35638 McBrier, Harry	Fayette	5	1 - 15 "
35652 Conley, Creed W.	Wood	3	1 - 20 "
35822 Hoffman, Rudolph	Ohio	4	1 - 15 "
35849 Workman, Henry D.	Cabell	3	15 "
35873 Crist, Raymond	Wyoming	3	1 - 15 "
35886 Berry, John W.	Kanawha	3	1 - 10 "
35896 Anderson, Jess	Raliegh	4	1 - 15 "
35907 Poindexter, Clarence	Ohio	3	1 - 15 "
35974 Campbell, Shirley	Cabell	4	1 - 15 "
35996 Dingess, Carroll	Cabell	3	1 - 10 "
36000 Ezner, Albert	Randolph	3	2 - 10 "

[fol. 18]

36074 Cramer, Charles	Ohio	6	1 - 15 "
36136 Brewster, Cornelius	Logan	5	1 - 20 "
36206 Hendricks, Oliver	Logan	5	1 - 10 "
36231 Fielder, Herbert H.	Mercer	3	2 - 10 "
36372 Height, Walter	Marshall	3	1 - 15 "
36463 Skyles, Willard	Kanawha	3	25 "
36493 Blair, Clyde	McDowell	4	1 - 10 "
36496 Horvath, Frank	McDowell	3	2 - 10 "
36516 Harshbarger, Leo	Cabell	3	1 - 10 "
36530 Crosby, Nathaniel	Logan	3	2 - 10 "
36533 Jordan, Willie J.	Logan	3	2 - 10 "
36627 Graden, Albert W.	Wetzel	3	15 "
36691 Petty, Ralph	Wood	5	1 - 10 "
36712 Winston, Roy	Wood	3	1 - 10 "
36735 Cartar, Howard L.	Mingo	3	1 - 10 "
36747 Hayden, Leonard	Kanawha	4	25 "
36753 Benson, Claude E.	Wood	7	2 - 10 "
36826 Banks, Eugene	Pocahontas	3	1 - 15 "
36897 Colliers, Sherlin	Cabell	7	1 - 10 "
36897 Sailor, Alfred E.	Ohio	3	2 - 10 "
36903 Mundy, Lloyd	Greenbrier	3	1 - 10 "
36902 Waddell, William	Raleigh	4	1 - 15 "
36907 Collins, Lee E.	Mingo	4	2 - 20 "
37000 Phillips, Carranza	Kanawha	4	2 - 10 "
37200 Blair, Clarence	Cabell	4	2 - 10 "
37251 Knight, William L.	Marion	3	1 - 10 "
37291 Riffe, Raymond	Wood	4	1 - 10 "
37373 Coffman, William J.	Harrison	5	1 - 10 "
37379 Horho, Joseph P.	Cabell	6	2 - 10 "
37344 Wheeler, P. A.	Cabell	6	2 - 10 "
37357 Parsons, Charles	Kanawha	4	1 - 10 "
37372 Marcum, Wilson	Logan	3	1 - 15 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
37691	Hall, Lawrence	Mason	3	2 - 10 Years
37697	Castrell, Charles	Mingo	5	1 - 15 "
37694	Hargrove, Phillip	Kanawha	3	2 - 10 "
37698	Strickland, Clarence	Kanawha	4	25 "
37697	Anderson, Lewis D.	Boone	3	10 - 25 "
37694	Jefferson, George A.	Wood	5	1 - 10 "
37695	Richardson, Jay	Cabell	5	1 - 10 "
37691	Dumppay, William	Logan	3	1 - 10 "
37695	Shawcross, Curtis R.	Raleigh	4	1 - 10 "
37699	Johnson, William C.	Kanawha	4	5 - 15 "
37717	Woodard, Calvin F.	Wehster	3	1 - 10 "
37701	Thompson, Charles	Cabell	3	1 - 15 "
37707	Holley, Sam	Cabell	6	1 - 10 "
37709	Brittantine, Daniel	Cabell	3	1 - 15 "
37819	Christina, Thomas W.	McDowell	3	1 - 15 "
37829	Guent, Ernest	McDowell	5	1 - 10 "
37831	Anderson, Claude M.	Raleigh	4	1 - 15 "
37834	Kaplan, Harry	Cabell	6	1 - 10 "
37839	Jarrell, John R.	Kanawha	4	1 - 15 "
37874	Patterson, Joe	Raleigh	4	1 - 10 "
37894	Long, Jeremiah E.	Mercer	6	1 - 10 "
37897	Kidd, Lee Henry	Kanawha	5	1 - 10 "

[fol. 19]

37941	Smith, Dorsey	Kanawha	6	25 "
37969	Fagna, Charles	Cabell	3	1 - 10 "
37995	Stanley, Curtis	Mingo	4	1 - 10 "
38007	Salvaggio, Thaido	Barbour	4	1 - 10 "
38019	France, Thomas	Cabell	4	1 - 15 "
38021	Martin, Carl D.	Prenton	5	2 - 10 "
38039	Allen, Edward	Lewis	4	2 - 10 "
38042	Bauch, Raymond	Cabell	3	2 - 10 "
38045	Bennett, Clarence J.	Randolph	3	1 - 15 "
38054	McGee, George W.	Kanawha	3	2 - 10 "
38107	Reiser, Joe	Greenbrier	4	1 - 10 "
38149	Harrell, Tilden	Harrison	4	1 - 15 "
38189	Eplin, Wilbert J.	Kanawha	4	1 - 10 "
38202	Ochs, Bonnie W.	Wood	4	1 - 10 "
38242	Spence, Thurman	Cabell	4	2 - 15 "
38248	Kelly, Rubin	Berkeley	4	1 - 10 "
38255	Whaler, Doyle F.	Putnam	3	5 "
38257	Fate, George	Putnam	3	1 - 10 "
38270	Davis, Charles	Kanawha	3	1 - 10 "
38284	Morris, Mason E.	Kanawha	3	18 "
38284	Shipper, Lawrence	Berkeley	7	1 - 15 "
38279	Meadow, Everett C.	Randolph	3	1 - 15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
38390 Cannon, Eugene	Ohio	3	1 - 10 Years
38391 Russell, James	Wood	3	2 - 10 "
38393 Sutphin, Arvit	Roane	3	1 - 10 "
38454 Gonzales, David	Brooke	3	1 - 15 "
38480 King, William	Grant	3	1 - 25 "
38513 Kerna, William	Wayne	3	2 - 10 "
38517 Walker, Owen	Wayne	3	1 - 5 "
38531 Hyatt, Harold	McDowell	3	1 - 15 "
38543 Lewis, Ronnie	Kanawha	6	1 - 10 "
38573 Ward, James	Wyoming	3	1 - 10 "
38575 Hicks, Walter	Wyoming	4	1 - 10 "
38581 Winston, William	Raleigh	3	1 - 10 "
38617 Grose, Haymond	Fayette	6	2 - 10 "
38630 Mayle, Eulah	Barbour	4	2 - 10 "
38635 Bever, Irvin J.	Marion	4	1 - 10 "
38673 Shipman, Jared T.	Harrison	3	2 - 10 "
38680 Hitt, Emmitt	Kanawha	3	5 - 18 "
38697 Willa, Earl A.	Mercer	3	1 - 10 "
38715 Trickey, William S.	Ohio	6	1 - 5 "
38739 Riser, Louis J. Jr.	Mineral	3	1 - 10 "
38748 McGowan, James D.	Jefferson	4	1 - 10 "
38770 Whitacre, Welba	Morgan	4	15 "
38771 Ackley, Nathan	Webster	3	1 - 10 "
38774 Barker, Harold J.	Wood	3	1 - 10 "
38791 Waybright, Dewey	Wood	3	1 - 10 "
38825 Jenkins, Festus	Jefferson	5	1 - 10 "
38840 Bea, Barkley R.	Kanawha	7	1 - 10 "
38849 Riley, James	Kanawha	3	10 "
38850 Capps, Thomas W.	Kanawha	3	1 - 10 "
38852 Legg, William C.	Raleigh	3	1 - 10 "
38854 Markle, William J.	Kanawha	3	1 - 15 "
38891 Plumm, Neal C.	Randolph	4	2 - 10 "

[fol. 20]

38875 Bailey, Cecil	Harrison	5	1 - 10 "
38877 Clouse, Donald R.	Brooke	3	1 - 10 "
38889 Hudash, James	Monongalia	3	10 "
38906 Luther, Kermit	McDowell	3	1 - 10 "
38907 Marshall, Rudolph	McDowell	3	1 - 10 "
38937 Hubbard, Harry C.	Jackson	3	1 - 15 "
38955 Hita, Thomas	Berkeley	3	2 - 15 "
38960 Holley, Herman L.	Kanawha	4	1 - 10 "
38984 Marrow, Denver	Kanawha	3	2 - 10 "
38997 Swigger, William R.	Harrison	5	1 - 10 "
39015 Sheppard, Thomas	Logan	3	1 - 10 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
39024	Davis, Alfred	Harrison	3	1 - 10 Years
39030	Barry, Joseph	Hampshire	3	1 - 10 "
39033	Hopson, Donald H.	Wood	7	25 "
39042	Bell, Bernard J.	Wayne	3	2 - 10 "
39048	Pierson, Charles	Kanawha	5	1 - 10 "
39071	Baker, Edward	Raleigh	3	1 - 10 "
39081	Barnhart, Paul	Preston	3	1 - 5 "
39104	McBee, Clarence T.	Mineral	4	1 - 15 "
39114	Gill, Joseph C.	Summers	5	1 - 15 "
39125	Hamrick, Clarence	Webster	4	1 - 10 "
39171	White, Clem L.	Fayette	4	2 - 20 "
39191	Alleman, Calvin	Brooke	3	1 - 10 "
39198	Romine, Charlie	Harrison	4	2 - 10 "
39240	Savino, Angelo J.	Gilmer	3	1 - 10 "
39212	Johnson, Marcellous	Raleigh	3	1 - 10 "
39213	Douglass, Coy J.	Raleigh	3	1 - 10 "
39220	Drake, Eddie Lee	Kanawha	3	1 - 10 "
39227	Hysell, Carl	Kanawha	3	1 - 10 "
39359	Beaver, Jack G.	Wayne	3	1 - 10 "
39261	Starcher, Clari C.	Putnam	3	10 - 25 "
39272	McClain, Walter	Wayne	4	1 - 10 "
39283	Shears, William	Marion	5	1 - 5 "
39298	Richmond, Paul	Randolph	3	2 - 10 "
39302	Leasure, John	Wood	4	1 - 10 "
39312	Menefee, Glen D.	Marion	3	1 - 10 "
39313	Kelly, Harlan L.	Wood	4	2 - 10 "
39319	Kessell, Charles E.	Kanawha	3	1 - 10 "
39356	Ragus, Troy	Kanawha	6	2 - 10 "
39265	Fain, Frank	Fayette	3	1 - 10 "
39364	Daniels, Samuel	Raleigh	3	2 - 10 "
39283	Patterson, Charles	Raleigh	3	1 - 10 "
39389	Hooks, Charles	Harrison	5	1 - 10 "
39394	Drake, Lovell	Putnam	3	2 - 10 "
39392	Long, Calvin W.	Randolph	4	1 - 10 "
39409	Hurd, Wesly	Harrison	3	1 - 10 "
39410	Bernard, Joseph	Harrison	5	1 - 5 "
39416	Curtis, Robert	Wayne	4	1 - 10 "
39421	Coles, Walter H.	Kanawha	3	1 - 5 "
39423	Favors, Henry H.	Kanawha	5	25 "
39434	Smith, William A.	Kanawha	3	1 - 10 "
39455	Jenkins, Laber	Logan	3	1 - 10 "
39474	Billinton, Richard	Ohio	3	1 - 5 "
39485	Chance, Walter	Kanawha	4	1 - 10 "
39358	Taylor, Lawrence P.	Mineral	3	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
[fol. 21]			
39493 Dooley, Charles	Monogalia	3	1 - 5 Years
39495 Ware, Everett L.	Upshur	3	1 - 15 "
39509 White, Douglas	Mineral	5	1 - 15 "
39511 Stone, Bob	McDowell	3	2 - 15 "
39540 Belcher, Tony	Kanawha	4	2 - 10 "
39549 Skeens, Floyd Jr.	Kanawha	3	1 - 5 "
39557 Mace, Floyd D.	Kanawha	6	1 - 5 "
39567 Rhoads, Walter B.	Harrison	3	1 - 10 "
39604 Baisden, Harry	Mingo	5	1 - 10 "
39610 Moore, William	Lincoln	3	1 - 10 "
39611 Fry, Ruel	Lincoln	3	1 - 5 "
39617 Adkins, Leonard	Lincoln	3	2 - 10 "
39638 Cyrus, Grover	Logan	6	2 - 10 "
39647 Foy, Frank	Mercer	3	1 - 15 "
39647 Mailish, Jake	Mercer	4	2 - 15 "
39681 Bailey, Donald E.	Wood	4	2 - 10 "
39682 Morris, Harry V.	Wood	3	1 - 10 "
39706 Mitchem, Arthur	McDowell	3	1 - 15 "
39709 Cooper, Edgar T.	Fayette	5	1 - 15 "
39710 Snyder, Robert P.	Fayette	3	2 - 10 "
39712 Ritchardson, Edward	Fayette	6	1 - 15 "
39732 French, Wiley Jr.	Mercer	3	1 - 10 "
39766 Barton, Jack	Kanawha	3	15 "
39787 King, Russell	Clay	4	1 - 10 "
39795 Gray, William	Wetzel	3	1 - 10 "
39801 Dobbs, Eugene	Monongalia	3	1 - 10 "
39802 Starr, Thomas	Monongalia	4	1 - 10 "
39803 Cook, Robert K.	Tyler	4	1 - 10 "
39804 Goettle, Carl R.	Tyler	4	1 - 15 "
39815 Brannon, James H.	Kanawha	5	1 - 10 "
39821 Kidd, James E.	Kanawha	3	5 - 20 "
39824 Stone, Charles E.	Kanawha	3	1 - 15 "
39840 Richards, John	Wyoming	3	5 - 20 "
39841 Pike, Theodore	Brooke	7	2 - 10 "
39844 Ballinger, John	Monongalia	4	1 - 5 "
39846 Isom, Robert H.	Mercer	9	1 - 10 "
39868 Osbourne, Ozie Jr.	Logan	3	10 "
39874 Sayre, Gilman	Cabell	3	1 - 10 "
39916 Scott, James D.	Kanawha	3	1 - 10 "
39918 Alexander, Louisshes	Kanawha	3	1 - 15 "
39932 George, Mason	Hardy	3	1 - 10 "
39964 Blanton, Boone	Mingo	3	15 "
39976 Dixon, Webster W.	Jefferson	3	15 "
39979 Palmer, John L.	Marion	5	1 - 15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
39989 Roberts, Carl	Cabell	5	1 - 15 Years
39993 Cobb, Orval E.	Kanawha	5	2 - 10 "
39996 Blankenship, Andrew	Kanawha	5	1 - 10 "
40008 Burgess, Bill E.	Mercer	3	1 - 10 "
40016 Roberts, William	Fayette	3	20 "
40017 Hoffman, George	Ohio	3	1 - 10 "
40044 Hogston, Charlie	McDowell	3	1 - 10 "
40046 Jenkins, William J.	Fayette	3	1 - 10 "
40052 Byrd, Paul	Cabell	3	1 - 10 "

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40056 McVey, Melvin	Kanawha	3	1 - 10 "
40062 Hall, Oris F.	Kanawha	5	1 - 10 "
40063 Hall, Walter J.	Kanawha	3	1 - 10 "
40070 Davidson, J. E. Jr.	Kanawha	3	1 - 15 "
40079 Taylor, Robert	Wyoming	3	1 - 10 "
40080 Webb, Clownie	Kanawha	3	1 - 10 "
40092 Spencer, Rome	Brooke	3	10 "
40109 Robinson, Charlie	Morgan	5	1 - 15 "
40110 Johns, Charles E.	Morgan	4	1 - 15 "
40124 Lambert, Ervie	Pendleton	3	1 - 10 "
40127 Carr, James C.	Mineral	3	1 - 10 "
40132 Johnson, Urban	Kanawha	3	1 - 15 "
40136 Harbert, George	Taylor	3	1 - 10 "
40182 Smith, Douglas H.	McDowell	3	1 - 10 "
40194 Helmandollar, Walter	Mercer	3	1 - 10 "
40196 Carway, Clayton	Mercer	6	1 - 10 "
40213 Sama, James N.	Greenbrier	3	1 - 10 "

(as of June 3, 1955, The foregoing Inmates still at WVP)

30805 Ford, Durward	Raleigh	3	2 - 15 "
30812 Borker, Eaton	Mineral	5	1 - 15 "
30813 Dillon, James	Kanawha	4	1 - 10 "
30831 Kirk, Clarence	Kanawha	4	1 - 10 "
30838 Griffith, Russell	Kanawha	3	1 - 10 "
30840 DeBoard, Paul	Kanawha	3	2 - 10 "
30882 Gray, Ralph	McDowell	3	1 - 10 "
30910 Henahley, H. V.	Braxton	3	2 - 10 "
30921 Williams, Lorenzo	Brooke	3	2 - 10 "
30933 Harper, Clarence	Raleigh	3	2 - 10 "
30935 Lott, Dearman	Wood	3	15 "
30953 Miller, Basil	Summers	4	1 - 15 "
30956 Huffman, James H.	Summers	3	1 - 15 "
30958 Moore, George	Summers	3	1 - 15 "
30964 Wiley, Dennis W.	Raleigh	3	2 - 15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
30972 Aliff, Lewis	Raleigh	3	6 Years
30976 Wills, Howard W.	Fayette	3	2 - 10 "
30986 Graybill, Orvil	Greenbrier	3	2 - 10 "
30993 Quinn, Harley	Harrison	3	1 - 10 "
30996 Benson, Clarence	Mason	3	2 - 10 "
31003 Jones, Willie	Kanawha	3	2 - 10 "
31008 Willis, Forrest K.	Kanawha	3	12 "
31010 Watkins, Robert	Kanawha	3	1 - 15 "
31013 Shultz, Foster R.	Kanawha	3	1 - 15 "
31026 Derrick, Estil	Kanawha	3	1 - 15 "
31030 Burdette, Leonard	Kanawha	3	8 "
31027 Davis, Cecil	Kanawha	3	1 - 10 "
31032 McCoy, Leslie	Kanawha	3	45 "
31092 Self, John R.	Cabell	5	2 - 15 "
31495 Bright, Charles	Cabell	3	1 - 10 "
31104 Jones, Bennie	Cabell	3	1 - 15 "
31111 Murphy, Erthal A.	Wayne	3	2 - 15 "
31137 Waite, Harry	Monongalia	3	15 "
31141 Matheny, Okey	Pocahontas	3	2 - 10 "

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31158 Hill, Eli Jr.	Mercer	3	1 - 10 "
31170 Patterson, Joe	Fayette	3	1 - 10 "
31178 Gibson, Brown	Kanawha	3	1 - 15 "
31180 Fenton, Willie	Kanawha	3	1 - 10 "
31204 Falla, Ralph	Cabell	3	1 - 10 "
31240 Westmoreland, C.	Summers	5	1 - 20 "
31246 Mooney, Grat	Kanawha	3	1 - 15 "
31248 Deberry, Martin	Preston	3	1 - 15 "
31271 Sheppard, Clinton	Mercer	3	6 "
31285 Smith, Allen	Nicholas	3	1 - 5 "
31288 Holmes, Russell	Greenbrier	3	1 - 10 "
31298 Hopkins, Howard C.	Monongalia	4	2 - 10 "
31317 Blankenship, Slesher	McDowell	3	1 - 10 "
31320 Foddrell, Babe E.	McDowell	3	1 - 10 "
31325 Carter, Harrison	McDowell	3	1 - 10 "
31327 Combs, Orville	McDowell	3	2 - 10 "
31337 Mace, Floyd D.	Kanawha	5	1 - 5 "
31338 Danshire, Paul	Ohio	3	2 - 10 "
31391 Ross, John	Taylor	3	1 - 10 "
31396 Standard, Woodrow	Taylor	3	1 - 20 "
31400 Harvey, James S.	Jackson	4	1 - 10 "
31404 Lacaria, George	Harrison	3	10 "
31408 Wetzell, C. I.	Grant	3	2 - 10 "
31422 Fletcher, Ray	Berkley	5	10 "
31433 Wilson, Chris	Wood	4	2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
31439 Cunningham, Roy	Kanawha	3	2-10 Years
31440 Johnson, Chester M.	Kanawha	3	1-3 "
31446 Mollohan, Olen	Kanawha	3	10 "
31451 Smith, Dewey	Kanawha	5	1-5 "
31459 Daniel, Elijah	Kanawha	3	2-10 "
31462 Cobb, Robert	Kanawha	5	1-10 "
31470 Adkins, Roy	Putnam	3	1-10 "
31496 Hoard, Robert	Marion	5	2-10 "
31499 Richardson, Eddie	Marion	5	1-15 "
31510 Powell, William	Ohio	3	1-10 "
31515 Helmandollar, Hubert	Mercer	3	1-10 "
31522 Underwood, Ray	Mercer	4	1-10 "
31525 Spencer, James E.	Mercer	3	1-10 "
31526 McClure, William Jr.	Mercer	7	2-10 "
31530 Williams, Lewis	Raleigh	4	2-15 "
31535 Hairston, Charles	Raleigh	3	1-15 "
31570 Young, David	Cabell	4	1-15 "
31571 Kicks, Harry R.	Cabell	3	1-10 "
31573 Neal, Ernest E.	Cabell	4	1-15 "
31575 Johnson, Fate	Cabell	5	1-10 "
31605 Ellinger, Herman H.	Grant	3	2-10 "
31624 Crouch, Willie	McDowell	3	1-10 "
31635 Combs, Arthur	Boone	3	2-10 "
31644 Morgan, Rose	Wood	5	1-15 "
31662 Meadows, Carl	Harrison	3	1-10 "
31671 Daniels, Charles	Harrison	4	1-10 "
31681 Torchi, Frank	Marion	3	1-15 "
31683 Smith, Emmett	Marion	5	1-10 "
31701 Crum, John	Logan	5	1-10 "

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31704 Smith, Lovell	Logan	3	1-15 "
31711 Adkins, Elza	Logan	3	1-5 "
31730 Evans, Theodore	Kanawha	3	1-10 "
31731 Hall, Oris	Kanawha	3	1-10 "
31737 Thompson, Conway	Kanawha	5	2-10 "
31740 Russell, Joe	Kanawha	4	1-15 "
31750 Oliver, Raymond	Kanawha	4	1-10 "
31755 Roberts, Edward	Kanawha	3	1-10 "
31757 Webb, Walter	Kanawha	3	1-10 "
31773 Welley, George	Cabell	3	1-10 "
31775 Pennington, John	Cabell	3	1-15 "
31778 Wilson, Truman	Cabell	3	1-15 "
31785 Spears, George	Cabell	4	1-10 "
31791 Martin, Dell	Cabell	3	1-10 "
31806 Frazier, Ivan	Kanawha	3	2-15 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
31816 Walker, Stone	Summers	3	1 - 15 Years
31828 White, Clem	Fayette	3	1 - 10 "
31851 Meadows, Spurgeon	Mercer	3	1 - 20 "
31852 Mosley, Eugene	Mercer	5	1 - 10 "
31857 Brown, Eugene	Mercer	3	1 - 10 "
31874 Smith, Oscar	Webster	3	2 - 15 "
31882 Jackson, Walker	McDowell	3	1 - 10 "
31887 Dumbrowski, Andy	Brooke	3	2 - 10 "
31888 Ellington, Olin	Brooke	5	1 - 10 "
31891 Willis, Marlin	Lincoln	3	1 - 5 "
31902 Barker, Harold J.	Ritchie	3	1 - 10 "
31909 Nagy, Steve	Kanawha	6	2 - 10 "
31911 High, John	Kanawha	3	2 - 10 "
31934 Miller, Raymond	Kanawha	4	1 - 10 "
31940 Ross, Harry	Berkley	3	1 - 10 "
31941 Snyder, Robert N.	Berkley	5	1 - 10 "
31945 Turner, Charles L.	Mineral	3	1 - 10 "
31946 Groves, William	Pocahontas	3	1 - 5 "
31954 Gilas, James W.	Morgan	4	1 - 10 "
31956 Lee, Robert	Jefferson	3	2 - 10 "
31960 Lierson, Charles	Kanawha	4	12 "
31962 Johnson, Urban	Kanawha	3	2 - 15 "
31963 Auraby, George F.	Kanawha	4	1 - 10 "
31969 Dorsey, Eddie	Ohio	3	5 "
31971 Lucas, Leonard	Ohio	4	1 - 10 "
31973 Hummell, Fred	Marshall	4	1 - 10 "
31995 Smith, Robert	Summers	3	25 "
31998 Lough, William F.	Barbour	3	1 - 10 "
32015 Roberts, Elsworth	Cabell	3	1 - 10 "
32017 Watkins, John	Cabell	3	1 - 15 "
32018 McGue, O. J.	Cabell	4	1 - 10 "
32019 Smith, Homer	Cabell	5	2 - 15 "
32025 Spears, Edward	Logan	3	1 - 10 "
32051 Fultz, John G.	Hardy	4	1 - 10 "
32032 Gather, Bunion	Mercer	3	5 "
32046 Wyer, John W.	Harrison	3	1 - 10 "
32049 Long, Archie	Marion	3	1 - 15 "
32050 Queen, Clifford	Marion	3	1 - 10 "
32061 Neff, Lundy	Nicholas	3	1 - 15 "
32078 Dancy, Elmer	Fayette	3	1 - 10 "
32081 Treadway, Leslie	Fayette	3	1 - 15 "
* [fol. 25]			
32084 Clark, Booker	Kanawha	3	1 - 10 "
32085 Green, Irwin	Kanawha	4	2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
32086 Lester, Kyle J.	Kanawha	3	1 - 5 Years
32101 Stoeffel, Orlan	Kanawha	3	2 - 10 "
32110 McKinney, Amos	Summers	4	1 - 15 "
32124 St. Clair, Charles	McDowell	4	1 - 15 "
32135 Johnson, John H.	Wayne	4	1 - 10 "
32151 Bays, Lonnie W.	Taylor	3	2 - 10 "
32158 Cutlip, Vesper R.	Pocahontas	3	2 - 10 "
32165 Harris, Alonzo	Logan	5	1 - 10 "
32166 Finley, James	Logan	3	1 - 10 "
32176 Dingess, Charles	Logan	3	1 - 5 "
32181 Baisden, Harrison	Mingo	4	5 - 18 "
32203 Robinson, Dallas H.	Cabell	3	1 - 15 "
32204 Bolt, Isaac	Cabell	3	15 "
32207 English, Acy Glen	Cabell	3	2 - 15 "
32212 Strickland, Clarence	Kanawha	3	1 - 15 "
32233 Allen, James W.	Mercer	5	2 - 10 "
32248 Smith, George	Ohio	3	1 - 10 "
32257 Lott, Clyde W.	Wood	3	1 - 10 "
32269 Blunt, Willie	McDowell	3	2 - 10 "
32272 Scarberry, Clyde	McDowell	4	1 - 5 "
32277 Taylor, William H.	Braxton	3	1 - 15 "
32293 Harris, Hubert	Doddrige	3	1 - 10 "
32302 Jones, William	Harrison	5	1 - 10 "
32303 Rucks, William G.	Harrison	4	1 - 15 "
32304 Ross, John H.	Harrison	4	1 - 10 "
32305 Jones, Reginald	Harrison	3	1 - 10 "
32306 Lowery, M. H.	Harrison	3	1 - 10 "
32308 Coffman, William	Harrison	4	1 - 10 "
32309 Rice, Woodland	Harrison	4	1 - 10 "
32316 Lipascomb, Howard	Berkley	4	1 - 10 "
32329 Loomis, Leslie C.	Roane	4	1 - 10 "
32330 Myers, Roy E.	Wood	3	1 - 10 "
32332 Oshe, Romeo	Wood	4	1 - 10 "
32352 Williams, Henry Jr.	Wyoming	3	1 - 10 "
32355 Drake, Bill	Raleigh	4	1 - 15 "
32364 Jackson, Nelson	Mercer	7	1 - 15 "
32366 Day, George	Mercer	3	2 - 10 "
32374 Dillon, Perlle	Cabell	3	7 "
32382 Spears, Jamer	Cabell	4	1 - 15 "
32383 Phillips, Carranza	Cabell	3	1 - 15 "
32385 Daniels, John A.	Cabell	3	1 - 10 "
32386 Maxwell, Webster	Cabell	3	1 - 5 "
32388 Mullett, Fred	Cabell	4	1 - 10 "
32397 Duffy, John E.	Wood	3	25 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
32402 Willard, Charles	Berkley	4	2 - 10 Years
32430 Wilson, George	Kanawha	6	1 - 10 "
32432 Troy, E. B.	Kanawha	4	2 - 10 "
32438 McClure, Lyle	Kanawha	3	2 - 10 "
32444 Johnson, W. S.	Kanawha	4	1 - 15 "
32465 Banks, Dewill E.	Harrison	4	1 - 15 "
32467 McIver, Alfred	Harrison	5	1 "
32508 Hostottle, Gerald E.	Wood	3	1 - 10 "
32509 Jefferson, George	Wood	4	1 - 10 "

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32534 Riley, James	Kanawha	3	2 - 10 "
32537 Hull, L. A.	Kanawha	3	2 - 10 "
32555 Goodby, Ollie	McDowell	5	1 - 10 "
32567 Price, John	McDowell	3	1 - 5 "
32571 Boggs, Argel	Marshall	3	2 - 10 "
32597 Rose, Shelby	Raleigh	5	1 - 5 "
32601 Lemasters, Walter	Randolph	4	1 - 5 "
32607 Goodman, Abraham	Cabell	3	1 - 10 "
32608 Wylie, Theodore	Cabell	5	1 - 15 "
32610 McCoy, Golden	Cabell	4	1 - 15 "
32619 Lowther, Mallard F.	Harrison	4	1 - 15 "
32620 Stone, James	Kanawha	4	1 - 10 "
32630 Clevenger, Earl	Harrison	3	1 - 10 "
32649 Lotis, Brisco	Kanawha	4	1 - 10 "
32650 Gibson, John	Kanawha	5	2 - 10 "
32660 McBrayer, Harry	Summers	3	1 - 10 "
32662 Lilly, Owen Q.	Summers	3	2 - 10 "
32663 Phillips, Adam H.	Fayette	3	1 - 10 "
32676 Burton, Robert	Raleigh	3	1 - 10 "
32678 Houck, Charles	Raleigh	3	1 - 8 "
32699 Nicholson, Walter	Lewis	3	2 - 10 "
32700 Tolley, John A.	Webster	4	1 - 10 "
32712 Snell, Andy	Berkley	3	1 - 15 "
32715 Bailey, Victor A.	Kanawha	3	1 - 10 "
32731 Hooks, Charles	McDowell	3	1 - 10 "
32732 Johnson, Lewis E.	McDowell	3	2 - 10 "
32733 Prater, Anthony	McDowell	3	1 - 15 "
32744 Spears, Thruman	Cabell	3	1 - 15 "
32748 Long, Samuel	Cabell	5	1 - 10 "
32750 Tobinsson, Stanley	Cabell	3	1 - 10 "
32755 Broughton, James	Logan	3	1 - 5 "
32784 Newhouse, James D.	Kanawha	4	1 - 10 "
32793 Carrow, Tom	Kanawha	4	1 - 10 "
32801 Hamrick, Joe	Monongalia	5	2 - 10 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
32821	Pain, Carl	Raleigh	5	1 - 15 Years
32834	Baker, Hugh	Barbour	3	1 - 10 "
32839	Pauley, Albert	Cabell	5	1 - 10 "
32844	Woodrow, Raymond	Kanawha	3	2 - 10 "
32853	Copley, Elbert	Logan	3	7 "
32855	Goodwin, George T.	Harrison	4	1 - 15 "
32869	Hedley, Hubert	Wetzel	3	1 - 15 "
32884	Ellis, Harry	Greenbrier	3	1 - 15 "
32911	Starkey, Dennyil G.	Harrison	3	1 - 15 "
32939	Napper, Norman	Wayne	3	1 - 15 "
32995	Fike, Theodore	Marion	4	2 - 10 "
32962	Vance, Jess	Clay	3	1 - 5 "
32977	Roberts, Jinks	Mercer	3	1 - 10 "
32985	Davis, Cecil	Mercer	3	1 - 3 "
32987	Dunking, Herbert	Wyoming	4	1 - 10 "
32990	Leasure, John	Wood	3	1 - 15 "
32999	Gladwell, Sonnie	Kanawha	3	2 - 15 "
33009	Bechum, Randolph	Kanawha	3	1 - 5 "
33032	Dameron, Eugene	Ohio	3	1 - 10 "
33023	Simms, Audley	Kanawha	3	1 - 10 "
33037	Fink, Siles	Kanawha	3	5 - 18 "

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33039	Watts, Bee	Mercer	3	1 - 10 "
33044	Linkous, Noah H.	Mercer	4	1 - 10 "
33053	Huff, Lewis	McDowell	3	1 - 10 "
33058	Trippett, Harley B.	Harrison	3	1 - 15 "
33085	Swimm, Sherman	Cabell	3	2 - 10 "
33123	Huffman, C. C.	Kanawha	3	2 - 10 "
33131	Spencer, Edgar W.	Roane	3	1 - 10 "
33132	Talkington, H. W.	Roane	4	2 - 10 "
33140	Devonshire, Daniel	Berkley	3	1 - 5 "
33147	Pauley, Elwin	Kanawha	3	1 - 5 "
33156	Congrove, George F.	Wood	4	2 - 10 "
33159	Scrotaky, Andrew	McDowell	3	5 "
33185	Federoff, Mike	Raleigh	3	1 - 5 "
33200	Lynn, Hugh	Ohio	3	20 "
33211	Minter, James L.	Cabell	3	1 - 5 "
33213	Hendrick, Oliver	Cabell	3	1 - 5 "
33217	Anderson, Bill	Mingo	3	10 "
33256	Cloxtton, James H.	Summers	4	1 - 5 "
33318	Crisa, George W.	Harrison	5	1 - 10 "
33351	Roberts, Wilber	Mercer	5	1 - 10 "
33399	Harmon, Gillespie	Summers	3	1 - 10 "
33441	Gilmore, Forrest O.	Raleigh	3	2 - 10 "
33453	Fletcher, Willard	Kanawha	4	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
33465 Royal, Edward L.	Fayette	4	1 - 10 Years
33479 Worstell, Herman	Harrison	3	1 - 10 "
33482 Munia, Sam	Hancock	3	10 "
33503 Acord, William H.	Mingo	3	10 "
33526 Dudley, W. H.	Fayette	4	1 - 10 "
33527 Dingess, Charlie	Marshall	3	5 "
33531 Starcher, Holly	Ohio	3	10 "
33570 Harmon, Thomas S.	McDowell	3	1 - 10 "
33571 Brennigan, John W.	McDowell	3	2 - 10 "
33586 Jackson, Edd	Randolph	5	2 - 10 "
33594 Richards, Otis A.	Wood	3	1 - 10 "
33616 Patroakie, Joe	Wayne	3	1 - 10 "
33623 Barnett, Barney	Kanawha	3	5 "
33631 Johnson, Moses	Kanawha	3	5 "
33655 Gabe, Charles A.	Wood	3	1 - 40 "
33670 McIver, Alfred	Harrison	3	1 - 10 "
33672 Steele, Wilson V.	Harrison	3	1 - 10 "
33678 Sheff, Raymey	Mingo	5	1 - 10 "
33685 Crenay, Charles D.	McDowell	4	1 - 10 "
33689 Myers, Earl J.	Berkley	4	2 - 10 "
33691 Wilt, Francis H.	Mineral	3	1 - 10 "
33709 Richardson, L. W.	Kanawha	4	2 - 10 "
33718 Ervin, Robert	Marion	4	1 - 10 "
33729 Wilson, W. E.	Ohio	5	2 - 10 "
33740 Kennedy, Elsworth	Cabell	3	1 - 10 "
33742 Vaughn, Herbert	Cabell	3	1 - 15 "
33745 Miller, Harry	Kanawha	3	1 - 10 "
33748 Price, Frank W.	Kanawha	4	5 "
33758 Crews, Walter L.	Mercer	3	1 - 15 "
33768 Jones, James K.	Logan	4	1 - 15 "
33793 Douglas, Jack	Fayette	7	1 - 15 "
33807 White, James	Ohio	5	1 - 15 "

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33812 Albright, Leonard W.	Mineral	3	1 - 10 "
33817 Miller, Fred T.	Wood	3	1 - 30 "
33855 Marcum, Luther	Logan	3	1 - 10 "
33856 McCoy, Earl	Logan	4	1 - 10 "
33876 Bailey, Robert B.	Kanawha	3	5 "
33877 Feathers, Cecil	Kanawha	3	1 - 10 "
33879 Parsons, Clarence W.	Kanawha	5	1 - 10 "
33888 Cooper, Ray	Kanawha	3	5 "
33897 Townsend, James	Mingo	4	1 - 10 "
33920 Ford, Clarence W.	Raleigh	3	1 - 15 "
33922 Clark, Carl R.	Raleigh	3	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
33934 Wise, Bill	Wert	3	1 - 10 Years
33957 Lyons, John	Mingo	4	2 - 10 "
33961 Clay, Oscar	Wood	3	1 - 10 "
33964 Belcher, Tony	Kanawha	3	1 - 10 "
33968 Wilson, Joe	Roane	3	1 - 10 "
34006 Hensley, Carl	Logan	3	2 - 10 "
34007 Adkins, Charlie	Logan	6	1 - 10 "
34013 Dolan, Clyde	Logan	3	1 - 10 "
34026 Doleman, James	Jefferson	3	1 - 10 "
34033 Ribinson, Rufus	Kanawha	3	5 - 18 "
34035 Underwood, Andrew	Kanawha	3	1 - 10 "
34062 Harshaw, William	Kanawha	3	1 - 15 "
34069 Simmons, George B.	Kanawha	4	1 - 10 "
34074 Wilson, Donald	Ohio	3	1 - 18 "
34086 Grady, James E.	Wood	3	10 "
34088 Ruble, Everett L.	Wood	3	15 "
34116 Nelson, Tom	McDowell	5	1 - 10 "
34189 Barr, Thurman	Logan	3	2 - 15 "
34192 Miller, John	Logan	3	1 - 15 "
34201 Rogers, Lawrence E.	Berkley	3	1 - 15 "
34204 McKnight,	Greenbrier	3	1 - 10 "
34217 Terrell, Lawrence	Marshall	4	1 - 10 "
34228 Dunkley, Fred F.	Raleigh	3	1 - 15 "
34244 Cunningham, Roy	Kanawha	4	1 - 5 "
34255 Carver, Robert C.	Cabell	3	2 - 10 "
34262 Sowards, Opie	Mason	4	2 - 15 "
34294 Trest, W. H.	McDowell	3	1 - 5 "
34311 Strain, Nathaniel	Marion	3	1 - 15 "
34326 Smith, James	Logan	3	1 - 10 "
34328 Starks, Neal	Logan	4	1 - 10 "
34331 Cox, John	Logan	3	1 - 10 "
34394 Shears, William	Preston	3	2 - 10 "
34402 Adkinson, Clifford	Monongalia	3	1 - 10 "
34403 Bailey, Cecil A.	Lewis	4	1 - 5 "
34451 Stoeppelmann, A. J.	Kanawha	3	1 - 5 "
34465 Mace, Floyd D.	Kanawha	4	2 - 10 "
34470 Coffman, Otha	Harrison	3	1 - 5 "
34483 Pearson, Hollis	Harrison	3	1 - 10 "
34487 Clegg, Harold F.	Harrison	3	2 - 10 "
34490 Davis, William R.	Wood	3	1 - 10 "
34497 McBride, Russell	Wood	3	10 "
34519 Dennison, Max Jr.	Cabell	3	2 - 10 "
34546 Colbert, Gene D.	Berkley	4	2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
34550 Graring, Lawrence E.	Mercer	3	1 - 10 Years
[fol. 29]			
43578 White, William	Boone	5	1 - 15 "
34584 Jones, James	Logan	3	1 - 5 "
34616 Eixy, Sam	Kanawha	3	1 - 10 "
34633 Tomlin, James	Kanawha	3	1 - 10 "
34647 Johnson, Si Willie	Pocahontas	3	1 - 5 "
34670 Beasley, Frank	Cabell	3	2 - 15 "
34671 Betts, Joe	Cabell	3	1 - 15 "
34672 Bowen, Irvin	Cabell	3	1 - 15 "
34675 Emert, Clarence	Cabell	8	2 - 15 "
34694 Ayerman, Everett L.	Monongalia	3	1 - 10 "
34705 Scarberry, John D.	Wood	3	1 - 10 "
34721 Smith, Joseph E.	Jefferson	3	1 - 10 "
34738 Tabor, Clayton L.	Mercer	3	1 - 10 "
34739 Thompson, Aubrey	Mercer	3	1 - 10 "
34771 Sallisbury, J. D.	Monongalia	3	1 - 10 "
34787 Hayes, Robert	Marion	3	5 "
34825 Henthorn, Orville	Wirt	3	1 - 10 "
34857 Willard, Charles W.	Raleigh	4	2 - 10 "
34850 Miller, William	Marshall	3	1 - 10 "
34878 Adkins, Noah	Wayne	3	2 - 10 "
34884 Day, Tom	Cabell	4	1 - 10 "
34885 Wilson, Cos	Cabell	3	1 - 10 "
34888 Kochendorfer, George	Cabell	8	2 - 10 "
34890 Mattox, Henry	Cabell	3	2 - 15 "
34891 Tomlin, Howard W.	Cabell	4	1 - 5 "
34892 Shaffer, Jesse	Putnam	3	1 - 10 "
34909 Hedrick, Ralph	Raleigh	3	10 "
34915 Knisley, Dale	Roane	4	1 - 10 "
34916 Lipscomb, Howard	Jefferson	4	1 - 15 "
34922 Weaver, Albert L.	Harrison	4	1 - 5 "
34928 Kelly, Harlen	Roane	3	2 - 10 "
34935 Kendard, Leland V.	Mercer	3	1 - 10 "
34959 Blankenship, Walter	Wyoming	3	1 - 10 "
34998 Watt, Everett H.	Logan	4	2 - 10 "
35004 Hughes, James P.	Putnam	3	2 - 10 "
35044 Cox, John	Logan	3	1 - 10 "
35045 Doleman, James	Jefferson	3	1 - 10 "
35076 McCoy, Mont	Cabell	3	2 - 10 "
35083 Jordan, Cecil	Cabell	5	1 - 15 "
35094 Cobb, Orville E.	Kanawha	4	2 - 10 "
35095 Booth, Harry L.	Kanawha	3	2 - 10 "
35100 Pauley, James E.	Kanawha	3	2 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
35106 Brown, Alfred R.	Kanawha	3	1 - 10 Years
35109 Elswick, Robert	Kanawha	4	1 - 10 "
35111 Hall, Charles R.	Kanawha	3	1 - 15 "
35117 Westfall, Clayton	Kanawha	3	1 - 10 "
35124 Whiteside, Zach	Wetzel	3	1 - 15 "
35127 Goodman, William Q.	Wood	3	2 - 10 "
35146 Spruce, Ernest A.	Wood	4	1 - 10 "
35148 Dunn, Foster E.	Wood	3	2 - 10 "
35155 Hines, Everett L.	Preston	3	1 - 10 "
35162 Thompson, Harold	McDowell	5	1 - 10 "
35183 Erb, James E.	Wood	3	2 - 10 "
35194 Hunter, Henry P.	Marion	3	1 - 15 "
35259 Gatewood, Frederick	Kaleigh	3	1 - 10 "

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35252 Hull, Raymond J.	Harrison	3	2 - 10 "
35264 Crum, John	Kanawha	5	1 - 10 "
35276 Page, Harold	Kanawha	3	2 - 10 "
35284 Scott, Harold O.	Kanawha	5	2 - 10 "
35296 Alderman, Donald F.	Monroe	4	1 - 10 "
35334 Stanley, Curtis	Mingo	3	5 "
35337 Jones, Granville D.	Wood	5	1 - 10 "
35347 Edwards, David L.	Wood	4	1 - 10 "
35398 Smith, Belford E.	Cabell	4	1 - 10 "
35404 Aubille, Jesse	McDowell	3	1 - 5 "
35411 Davis, Matthew	McDowell	3	5 "
35420 Warfe, William	Mercer	3	1 - 10 "
35461 Lucas, Miley F.	Marion	5	1 - 5 "
35480 Taylor, Edward	Wood	3	1 - 10 "
35484 Mason, Billie	Berkley	3	1 - 10 "
35489 Bleigh, Walter L.	Tucker	3	2 - 10 "
35506 Baily, Victor	Kanawha	5	1 - 15 "
35562 Young, Vernon	Mingo	4	1 - 10 "
35605 Collins, Ered	Mercer	5	1 - 10 "
35607 Ball, William	Mercer	4	2 - 10 "
35627 Williams, Don O.	Greenbrier	3	1 - 10 "
35636 Worles, Pearl	Summers	3	1 - 10 "
35644 Hickman, Luther Jr.	Webster	3	5 - 20 "
35645 Criss, Cecil	Roane	4	1 - 10 "
35653 Porter, Joseph	Jefferson	4	2 - 10 "
35654 Hagan, John	Jefferson	3	2 - 10 "
35656 Ward, James	Wyoming	3	1 - 10 "
35661 Cross, Clifford R.	Wood	4	1 - 10 "
35670 Knight, Gerald	Roane	3	1 - 10 "
35684 Mounts, John	Mingo	3	1 - 5 "
35688 Stockton, Charlie	Mingo	4	1 - 10 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
35706 Hall, Cris F.	Kanawha	3	5 Years
35762 Basham, Paul E.	Kanawha	3	1 - 10 "
35790 Bush, James	Greenbrier	3	1 - 10 "
35796 Clegg, Harold F.	Harrison	3	2 - 10 "
35811 Adkins, Roy R.	Kanawha	3	2 - 10 "
35815 Boggess, Mansford	Kanawha	3	1 - 10 "
35824 Brown, Hunter	Wetzel	6	1 - 5 "
35833 Charlton, Reid	Raleigh	3	1 - 15 "
35864 Williamson, J. C.	Mingo	3	2 - 10 "
35866 Florence, Ray	Wood	3	1 - 10 "
35882 Hamrick, Milton	Harrison	3	2 - 10 "
35885 McElfresh, Cecil O.	Harrison	3	1 - 10 "
35916 Price, John H.	McDowell	4	1 - 10 "
35920 Cleaver, George	McDowell	5	1 - 10 "
35927 Boggs, Thurman	Harrison	3	1 - 10 "
35927 Adkins, Vernon	Kanawha	3	2 - 10 "
35994 Collins, Earl	Cabell	3	1 - 10 "
35998 Foster, Ray M.	Cabell	3	1 - 10 "
35999 Gibson, James H.	Cabell	3	1 - 10 "
36001 Hyer, C. E.	Cabell	3	1 - 5 "
36003 Johnson, Pate	Cabell	5	1 - 10 "
36028 Swim, Sherman	Wayne	3	1 - 10 "
36032 Thacker, Harry	Mason	4	1 - 10 "
36028 Clover, Arthur F.	Harrison	3	1 - 10 "

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36053 Chambers, Guy	Greenbrier	3	2 - 10 "
36071 Wilbur, John W.	Monongalia	3	1 - 5 "
36077 Jones, Robert L.	Ohio	3	1 - 20 "
36111 Blevins, Ernest	Mingo	4	1 - 10 "
36121 Sizemore, Jack	Mingo	3	2 - 10 "
36153 Stalling, Thomas	Berkley	3	2 - 10 "
36160 Miller, John	Logan	3	1 - 15 "
36161 Eplin, Howard	Kanawha	3	5 "
36185 Day, Dewey	Logan	6	1 - 15 "
36210 Scarberry, John	Wood	3	1 - 10 "
36219 Pifer, M. Jackson	Upshur	3	2 - 10 "
36225 Star, Thomas	Monongalia	3	1 - 10 "
36228 Smith, Homer	Cabell	5	2 - 15 "
36233 Lineous, Howard	Mercer	5	2 - 10 "
36259 Jackson, Benjamin	Marion	3	5 - 23 "
36264 Vincent, James W.	Marion	3	1 - 15 "
36285 McCoy, Burton H.	Berkley	3	2 - 15 "
36290 Roberts, Jinks	Mercer	3	1 - 10 "
36230 Meade, Tom	Fayette	4	1 - 10 "
36330 Kidd, Estil	Kanawha	3	1 - 10 "
36365 Kinkle, J. V.	Cabell	4	1 - 5 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
36385 Artia, Henry	McDowell	5	2 - 10 Years
36402 Hall, William	Wood	3	1 - 10 "
36419 Matheny, Hubert O.	Preston	3	1 - 15 "
36430 Coleman, Harley	Mineral	3	2 - 10 "
36431 Clarke, John	Kanawha	3	5 "
36434 Garrett, Owen	Kanawha	3	1 - 15 "
36442 Ramsey, Richard	Kanawha	3	1 - 10 "
36476 Brown, Bruce	Raleigh	4	1 - 10 "
36485 Fuller, James H.	Raleigh	3	1 - 10 "
36509 Fisher, Calvin	Fayette	3	1 - 10 "
36512 Christolm, Frank	Cabell	3	1 - 10 "
36524 Sweeny, John	Cabell	3	1 - 15 "
36531 Davis, Charles	Logan	3	1 - 15 "
36539 Pollard, Willard	Logan	3	1 - 10 "
36552 Stover, C. E. Jr.	Kanawha	3	1 - 10 "
36561 Maryland, Harry	Greenbrier	3	1 - 15 "
36564 Sandlin, Chester	Greenbrier	3	10 "
36569 Harshaw, William	Kanawha	3	1 - 15 "
36584 Lark, Kenneth	Kanawha	3	1 - 10 "
36601 Null, Milford D.	Kanawha	3	1 - 10 "
36609 Johnson, Richard	Wayne	3	1 - 10 "
36610 Burnette, George Jr.	Wayne	3	1 - 10 "
36617 Davis, Wolvin H.	Logan	3	1 - 10 "
36685 Bass, Berkley	Kanawha	4	3 "
36661 Moody, Arthur E.	Wood	3	1 - 10 "
36664 Wilson, Christopher	Wood	4	2 - 10 "
36700 Runyon, Charles	Ohio	3	2 - 10 "
36736 Imes, Ralph	Kanawha	3	1 - 15 "
36745 Woodrum, Raymond H.	Kanawha	3	2 - 10 "
36753 Beason, Claude H.	Monongalia	6	2 - 10 "
36755 Lemons, John	Monongalia	3	1 - 10 "
36780 Betta, Joe	Cabell	3	1 - 15 "
36798 Greer, Sabford W.	Raleigh	4	1 - 15 "
36852 Spencer, Edgar	Braxton	4	1 - 5 "
36874 Nesselroad, William	Wood	5	1 - 5 "

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36883 Belcher, Thomas	Cabell	3	2 - 10 "
36888 Dill, Fernand	Cabell	4	1 - 20 "
36890 Gryber, Ramsey Jr.	Cabell	5	10 "
36892 Hull, Lonnie	Cabell	4	2 - 10 "
36895 Lyons, Homer	Cabell	3	1 - 10 "
36950 Adkins, B. F.	Summers	3	1 - 5 "
36957 Dean, George H.	Logan	3	1 - 10 "
37005 Cranford, James	Mineral	3	2 - 10 "

Name & WVP Number		County	Prior Convictions	Term of Sentence
37210	Wheeler, P. A.	Cabell	6	2-10 Years
37057	Cooper, James	Mingo	3	10 "
37077	Mercer, James H.	Tyler	3	1-10 "
37115	Caldwell, James	Logan	3	1-5 "
37136	Wilson, Truman	Cabell	3	1-15 "
37206	Sparks, Robert	Ohio	5	2-10 "
37237	Huffman, Charles C.	Ohio	4	1-5 "
37240	Fisher, Charles	Marshall	3	1-10 "
37267	Henson, Frank	Ohio	3	1-10 "
37322	McCoy, Curtis	Wyoming	4	1-15 "
37352	Slack, Keith	Kanawha	3	2-15 "
37261	Cash, Lenvil L.	Kanawha	3	2-10 "
37364	Shaffer, Owan	Kanawha	3	1-10 "
37265	Osenburg, Edward	Kanawha	6	2-10 "
37368	Gales, Robert	Kanawha	7	1-5 "
37413	Taylor, Robert Jr.	Raleigh	3	1-5 "
37429	Phillips, Ottio L.	Fayette	3	1-10 "
37450	Smith, Robert L.	Kanawha	4	1-10 "
37462	Kinney, Walter L.	Kanawha	6	1-10 "
37473	Taylor, L. H.	Mercer	4	2-10 "
37475	Taylor, Robert	Mercer	4	1-10 "
37499	Pebbley, Ivan J.	Wood	5	2-10 "
37550	Fulton, Edwin	Brooke	3	1-10 "
37561	Phillips, Howard	Barbour	3	1-10 "
37625	Sherwood, Curtis	Raleigh	3	1-10 "
37674	Dicken, Henry	Kanawha	3	1-10 "
37664	Jorgenson, Weldon	Kanawha	3	1-10 "
37684	Hensley, Hal V.	Kanawha	3	2-10 "
37723	Dalton, Houston	Taylor	3	2-20 "
37740	Hulholland, Albert	Ohio	3	2-10 "
37744	Johnson, Pink S.	Kanawha	4	1-10 "
37747	Taylor, Joe E.	Kanawha	3	1-10 "
37749	Steele, Leon	Kanawha	3	1-5 "
37761	Welch, Gail	Fayette	3	1-10 "
37778	Wedemyer, F.	Berkley	3	1-10 "
37804	Creasy, John	Cabbell	3	1-10 "
37805	Craven, Edward	Cabbell	4	1-20 "
37809	Rice, Franklin	Raleigh	4	1-5 "
37829	Sweeny, Andrew	Mingo	4	1-10 "
37862	Gibson, William	Mercer	3	1-5 "
37925	Graves, William	Kanawha	4	2-10 "
37953	Yates, R. B.	Cabell	3	2-10 "
37978	White, William	Clay	4	1-5 "

Name & WVP Number	County	Prior Convictions	Term of Sentence
37987 Starcher, Lester	Wood	3	1 - 10 Years
37994 McCoy, M. F.	Mingo	3	1 - 5 "
38034 Pennington, John	Cabell	4	1 - 5 "
37057 Brennin, John	Mercer	3	2 - 10 "

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38074 Plaster, James	Tucker	3	1 - 15 "
38100 Hill, Forris R.	Kanawa	3	2 - 10 "
38002 Pater, Robert	Kanawha	5	1 - 5 "
38227 Stewart, John	Marion	3	1 - 10 "
33246 Johnson, Charles	Berkley	3	5 "
38258 Wheeler, Doyle	Putnam	3	5 "
38261 Gladwell, Sonny P.	Wetzel	3	2 - 15 "
38269 Wilson, Clyde	Kanawha	3	1 - 10 "
38385 Nichols, Clyde	Kanawha	3	2 - 10 "
38392 Stewart, Robert	Ohio	3	1 - 10 "
38344 Bowen, Jim	Wayne	3	5 "
38370 Layne, Fred J.	Ohio	3	2 - 10 "
38380 Davis, Alvin	Marshall	3	1 "
38386 Ealy, Carl T.	Fayette	4	1 - 10 "
38397 Janes, D. C.	Wood	3	1 - 5 "
38420 Harmon, Lem	Kanawha	3	1 - 10 "
38438 Jasper, William S.	Kanawha	3	2 - 5 "
38349 Bevins, Beachel W.	Lewis	3	2 - 10 "
38445 Perry, Fred	Cabell	5	1 - 10 "
38475 Woods, James C.	Fayette	3	1 - 10 "
38493 Waters, Cliff	Cabell	3	1 - 5 "
38514 Perkins, Fred	Wayne	3	1 - 10 "
38527 Myers, Milt	Mercer	3	1 "
38566 Ayers, Samuel	Marshall	4	5 "
38658 Thompson, Aubrey	Upshur	3	1 - 10 "
38627 Swim, Jake	Cabell	3	1 - 10 "
28664 Smith, Albert	Fayette	3	1 - 10 "
38690 Jones, Willie	Kanawha	4	1 - 15 "
38694 Bright, C. C.	Kanawha	3	2 - 10 "
38750 McFarland, Sherman	Kanawha	3	1 - 10 "
38772 McCmas, Raymond	Marion	4	1 - 5 "
38794 Starcher, Berlin	Wood	3	1 - 15 "
39275 Willford, John H.	Mercer	5	1 - 5 "
39625 Shifflet, John H.	Berkley	3	1 - 5 "
39641 Hammitt, Arthur	Logan	3	1 - 10 "
39651 Mayse, Odie B.	Barbour	3	1 - 10 "
39395 Massey, Joe	Wyoming	3	1 - 10 "
39833 Meadows, Willie F.	Kanawha	3	1 - 10 "

The End: Total 904

SEE: Statistics on Habitual Lifers—next page.

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The following Named Inmates are those that were sentenced to life on the Habitual Criminal Act to the West Virginia Penitentiary, from 1940 to June 3, 1955.

Figured in the statistical averages: 1940 to June 1955.

30788	Ables, Mike	Gilmer	39440	Hunter, Earl L.	Cabell
32016	Adkins, Leo	Cabell	40123	Jernell, William J.	Mineral
34952	Arbough, Larry	Ohio	32821	Jackson, Earl	Harrison
31611	Ashworth, Lee	Lincoln	39517	Johnson, Nathan	McDowell
39203	Barker, Robert M.	Lewis	39310	Jorgenson, Weldon	Wetzel
33649	Barhart, John	Wood	37296	Justice, Matt	McDowell
31824	Basham, Lawrence E.	Raleigh	39003	Lovejoy, Ronceford	Logan
38541	Blankenship, Vurgis	McDowell	38871	Martin, Charles W.	Kanawha
40086	Blankenship, Walter	Logan	32961	Meadows, William	Clay
35224	Braxton, Asron	Randolph	31793	Moore, Stanley	Cabell
31698	Browning, Denny	Logan	37226	Murray, Carl	Harrison
39508	Bruner, William H.	Cabell	34551	Neal, Henry	Ohio
34901	Bullet, James	Morgan	39089	Neff, Otto	Calhoun
33018	Cannon, Raymond	Ohio	32210	Newman, Elmer	Barbour
33728	Carr, Joseph D.	Ohio	35223	Nicholson, Jess	Lewis
32762	Chambers, Kilrain	Nichols	38790	Oyler, James	Taylor
37078	Clark, Robert	Harrison	31469	Pauley, Alva	Kanawha
38443	Coberly, Melvin	Ohio	36488	Peer, Harold	Harrison
35838	Coco, Dominic	Marshall	37688	Rossiter, Arthur	Ohio
35418	Conley, Charlie	Logan	35831	Scalf, Lee	Raleigh
33606	Cormack, Donald B.	Raleigh	35735	Scruggs, James	McDowell
32123	Daughtery, Hanry	McDowell	37777	Shanton, Lawrence	Berkley
30795	Davis, John H.	Raleigh	32138	Sheftic, Stanley	Hancock
32404	Dayton, Robert	Berkley	34105	Spouse, George	Wood
30808	Dobbins, Spencer	Braxton	39001	Spry, Charles F.	Logan
36316	Dotson, Clarence R.	Fayette	30206	Steele, Kelly	Raleigh
34638	Dunbar, Arnold	Jackson	80568	Thomas, Frank L.	Wyoming
35647	Eddins, Earl	Upshur	89471	Tichnel, W Elmer	Marshall
31387	Estepp, Charley	Nicholas	37606	Turner, Spurgen B.	McDowell
38151	Ferguson, Henry	Berkley	32002	Vlykeo, John	Brooke
30447	Foley, Lee	Nichols	35682	Weidensall, William	Raleigh
38720	Garner, James K.	Logan	36210	White, John P.	Raleigh
33843	Giles, George	Marion	39535	Whytsell, Simon	Calhoun
36066	Gilliam, Crumpton	Wayne	34288	Widmyer, Edwin G.	Morgan
34078	Greear, Millard	McDowell	39323	Wolford, Woodrow	McDowell
36567	Hall, Carl	Calhoun	34278	Wolverton, Donsil	Harrison
37391	Harris, Chester	Harrison	36297	Wright, James S.	Mason
34020	Heeny, Jack	Ohio	32865	Knott, Clifford	Mason
30977	Hicklin, William	Fayette	35735	Poindexter, James	McDowell
35290	Hobbs, Loren E.	Raleigh			

Total 79

Above still here as of June 1955

1 released, but 1 returned.

Not figured in averages;

Habitual Lifers, still here and received before 1940 1 10

Habitual Lifers, here and received since June, as of Sept. 1955 2

Total 12

Total number of Habitual Lifers still here as of Sept. 1955 91

[fol. 35]

STTISTICAL RECAPITULATION FROM THE FOREGOING DATA

By Counties; Number of men from the various Counties convicted and sentenced to the West Virginia State Penitentiary; all having been subject to a Life Sentence under the meaning of the State Habitual Criminal Act, from the year of 1940 to June 3, 1955:

County	Sentenced to Less than Life	Sentenced To Life	County	Sentenced to Less than Life	Sentenced To Life
Barbour	6	1	Mineral	11	1
Berkley	18	3	Mingo	23	0
Boone	3	0	Monongalia	17	0
Braxton	8	1	Monroe	1	0
Broke	9	1	Morgan	3	2
Cabell	100	4	Nicholas	3	3
Calhoun	3	3	Ohio	27	7
Clay	2	1	Pendleton	1	0
Doddridge	1	0	Pocahontas	5	0
Fayette	20	2	Preston	6	0
Gilmer	1	1	Putnam	8	0
Grant	3	0	Pleasants	0	0
Greenbrier	13	0	Raleigh	37	8
Hampshire	1	0	Randolph	8	1
Hancock	1	1	Ritchie	1	0
Hardy	2	0	Roane	9	0
Harrison	46	6	Summers	15	0
Jackson	2	1	Taylor	6	1
Jefferson	11	0	Tucker	3	0
Kanawha	191	2	Tyler	3	0
Lewis	4	2	Upshur	3	1
Lincoln	4	1	Wayne	16	1
Logan	43	6	Webster	6	0
Marion	22	1	Wetzel	7	1
Marshall	10	2	Wirt	2	0
Mason	8	2	Wood	55	2
McDowell	41	9	Wyoming	12	1
Mercer	45	0			
TOTAL: Sentenced to less than life				904	
TOTAL: Sentenced to life				79	
TOTAL: Subject to a life sentence				983	

Recap:

Total Sentenced to less than life in this period, but subject to same:	904
Total Prisoners actually receiving life in this period	79
Total number prisoners received WVP subject to a life sentence	983
Approximate total still here of this period receiving less than life:	300
Approximate total thats been released in this period receiving less than life.	600
Ratio of discrimination	11 to 1

[fol. 36]

IN THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

• • • •

STATE OF WEST VIRGINIA EX REL.

PAUL HOMER CRABTREE

VS.

D. E. ADAMS, Warden, West Virginia Penitentiary

Habeas Corpus

ORDER REFUSING PETITION FOR WRIT OF HABEAS CORPUS—
July 11, 1960

On a former day, to-wit, July 1, 1960, came the petitioner, Paul Homer Crabtree, in person, and presented to the Court his petition, and exhibits, and pauper's affidavit, together with note of argument in support of the petition, praying for a writ of habeas corpus ad subjiciendum to be directed to D. E. Adams, Warden, West Virginia Penitentiary, commanding him to produce the body of Paul Homer Crabtree before this Court, and show cause if any he can, why he detains said petitioner of and from his liberty. Upon consideration whereof, the Court is of opinion to and doth refuse the writ prayed for by the petitioner in his said petition.

[fol. 37]

Clerk's Certificate to foregoing
transcript omitted in printing

[fol. 38] SUPREME COURT OF THE
UNITED STATES

No. 280 Misc., October Term, 1960

PAUL H. CRABTREE, PETITIONER

VS.

D. E. ADAMS, Warden


ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND GRANTING PETITION FOR WRIT OF
CERTIORARI—Feb. 20, 1961

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Appeals of the State of West Virginia.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, and the case is transferred to the appellate docket as No. 747. The case is consolidated with No. 746 and a total of two hours is allowed for oral argument.

February 20, 1961

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SEP 8 1961

JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

Nos. 56 and 57

JAMES W. OYLER and PAUL H. CRABTREE,

Petitioners,

vs.

**OTTO C. BOLES, WARDEN WEST VIRGINIA PENITENTIARY,
MOUNDSVILLE, WEST VIRGINIA,**

Respondent.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF
THE STATE OF WEST VIRGINIA**

BRIEF FOR PETITIONERS

DAVID GINSBURG
1632 K St., N. W.
Washington, D. C.
Counsel for Petitioners

ANDREW F. McEVoy, Jr.
of Counsel

**BRIEF
FOR THE
PETITIONERS**

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

Nos. 56 and 57

JAMES W. OYLER and PAUL H. CRABTREE,

Petitioners,

vs.

**OTTO C. BOLES, WARDEN WEST VIRGINIA PENITENTIARY,
MOUNDSVILLE, WEST VIRGINIA,**

Respondent.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF
THE STATE OF WEST VIRGINIA**

BRIEF FOR PETITIONERS

Opinion Below

The orders of the Supreme Court of Appeals of the State of West Virginia denying the writs of habeas corpus are set forth in the records (OR. 60; CR. 37).¹ The writs were denied without hearing or opinion.

¹ "OR" identifies the Oyler Record,

"CR" identifies the Crabtree Record.

Jurisdiction

The order of the Supreme Court of Appeals of the State of West Virginia in the case of Oyler was entered on June 6, 1960 (OR. 60), in the case of Crabtree on July 11, 1960 (CR. 37). Oyler's petition for a writ of certiorari was filed on June 28, 1960, Crabtree's petition was filed on August 3, 1960; both petitions were granted on February 20, 1961, with leave to proceed *in forma pauperis*, and the cases were consolidated. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

Questions Presented

1. In state court criminal proceedings, following convictions under indictments for specified crimes, the prosecuting attorneys invoked the state's habitual criminal act against petitioners without prior notice of that fact, without advising petitioners beforehand of the previous convictions on which they proposed to rely, and without otherwise giving petitioners an opportunity to prepare their defense. Petitioners were thereupon sentenced to imprisonment in a penitentiary for life, rather than for the term of years provided by statute for the crimes for which they had been convicted. Have petitioners been deprived of their liberty without due process of law in violation of the Fourteenth Amendment?

2. In state court criminal proceedings in which petitioners have been imprisoned for life under a mandatory state habitual criminal act, have petitioners been denied the equal protection of the laws in violation of the Fourteenth Amendment if they can show that the law is being intentionally and purposefully applied and administered by state prosecuting attorneys with an unequal hand so as

practically and materially to discriminate between persons in similar circumstances?

3. Have the West Virginia courts acted in accordance with law under a mandatory state habitual criminal act in regarding as previous convictions, for purposes of that law, convictions under which petitioner was either placed on probation or confined to an Industrial School but never imprisoned in a penitentiary? May the West Virginia courts disregard a material error in an information alleging prior convictions filed to invoke the state's habitual criminal act? Are informations to invoke the West Virginia habitual criminal act timely filed if they are filed six or seven days after conviction?

4. Are petitioners entitled to a hearing by the West Virginia Supreme Court of Appeals on their applications for a writ of *habeas corpus* if their sworn applications contain proper allegations in support of the foregoing (paragraphs 1 through 3, *supra*) together with other evidence of probable cause to believe they are being detained without lawful authority?

Constitutional Provisions Involved

The last two clauses of Section 1 of the Fourteenth Amendment to the Constitution which provide, so far as material here:

" . . . nor shall any State deprive any person of . . . liberty without due process of law;

"nor deny to any person within its jurisdiction the equal protection of the laws."

Statement**On Behalf of Petitioner Oyler**

During the January Term, 1953, of the Circuit Court for Taylor County, West Virginia, petitioner was charged by indictment with the crime of murder (OR. 1). He was arraigned on January 23, 1953, assigned Court appointed counsel (OR. 3), pleaded not guilty, tried on February 5, 1953, and on that day convicted of murder in the second degree which, by statute, is punishable by confinement in the State penitentiary for a period of from five to eighteen years (OR. 3-5; 12-13). Sentence was deferred (OR. 28-29).

On February 11, 1953, according to the Court's Order of Commitment, petitioner's motion to set aside the jury verdict and for a new trial was heard and overruled and

"thereupon the Prosecuting Attorney tendered and asked leave to file an Information in writing, setting forth records of convictions and sentences of James William Oyler, thrice before, upon three several Indictments returned against him in the Court of Quarter Sessions of the Peace for the County of Bedford in the Commonwealth of Pennsylvania, on the charges of Grand Larceny, Breaking and Entering, and Burglary, respectively, all being felonies punishable by confinement in the penitentiary and alleging identity of the prisoner with the persons named in each of said records, which Information and Records are now ordered filed herein, and, after being cautioned as to the effect thereof, the said Defendant James William Oyler acknowledged in open court that he is the same person as the person names (sic) in said Information and records" (OR. 28-29).

The Court then determined that petitioner had thrice before been convicted in the United States of crimes "punishable by confinement in a penitentiary"; proceeded to pass sentence upon petitioner upon the verdict of murder in the second degree and upon the "former convictions of Felonies as aforesaid" and sentenced petitioner to be confined for life in the West Virginia State penitentiary. The Court's Order of Commitment contains the following paragraph:

"And, the life sentence aforesaid having been imposed only because it appears mandatory to do so, and considering the unfortunate life and background of the Defendant, the Court deems it (sic) proper in the interest of justice, to recommend that the Director of Probation and Parole consider granting a parole to said Defendant as soon as he is eligible therefore" (OR. 29).

Court appointed counsel was present during the proceedings on February 11, 1953 (OR. 28); since the Information is dated February 13, 1953, however, it is not clear whether counsel actually saw the Information and the attached indictments and orders before petitioner was committed; prior notice of the filing of the Information was not given.

Two days before the Taylor County Circuit Court's Order of Commitment, on February 9, 1953, the Clerk of the Bedford County, Pennsylvania, Court of Quarter Sessions had certified the following as a "full, true and correct copy of the Indictments and Orders of the Court" bearing on petitioner:

First, documents showing that in the May Sessions, 1950, on May 1, 1950, a presentment had been filed against petitioner for larceny of a motor vehicle of the approximate

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value of \$1250; that petitioner had refused the assistance of counsel, pleaded guilty and waived indictment; that he had been ordered to pay a fine of \$100 and make restitution as directed by the Probation Officer and had been placed on probation for five years (OR. 16-18).

Second, documents showing that in the February Sessions, 1951, two presentments had been filed against petitioner, one for burglary of \$50 from a drug store on December 31, 1950 (OR. 22), and the other for burglary of \$198.29 from the same drug store on January 8, 1951 (OR. 19). Petitioner waived indictment, pleaded guilty to both presentments and was committed to the Pennsylvania Industrial School at Camp Hill; on account of each presentment, he was ordered to pay a fine of \$25 and make restitution as determined by the Probation Officer.

The Taylor County Commitment Order, dated February 11, 1953 (OR. 28), states that the Prosecuting Attorney "tendered and asked leave to file an Information" setting forth the Bedford County, Pennsylvania, convictions and sentences "which Information and Records are now ordered filed herein." The Information, however, is dated two days later, February 13, 1953 (OR. 13). The certified copies of the indictment and orders, above mentioned, were made part of the Information (OR. 14).

Because of these convictions and orders the Prosecuting Attorney of Taylor County, West Virginia, represented to the Court that petitioner

"has been three times formally convicted of a felony in the Commonwealth of Pennsylvania, being punishable (by) a sentence in the penitentiary and is, therefore, a habitual criminal under Chapter 61, Article 11, Section 18, and ought to be confined in the Penitentiary

of the State of West Virginia for the rest of his natural life" (OR. 14).

The Court checked the matter of identity, agreed with the prosecuting attorney and remanded petitioner to the custody of the Warden of the West Virginia State penitentiary where petitioner has remained since that time.

The present proceeding was begun on May 26, 1960, when petitioner filed a petition for a writ of *habeas corpus* in the West Virginia Supreme Court of Appeals (OR. 60). His petition and supporting papers charged violation of the West Virginia Habitual Criminal statute in that petitioner had never before been sentenced to imprisonment in a penitentiary. Petitioner also charged violation of the Fourteenth Amendment to the Constitution of the United States in various respects including violation of the due process clause, in that petitioner had not been given prior notice and time to prepare a defense to the habitual criminal information, and violation of the equal protection clause in that the West Virginia Habitual Criminal statutes were being unequally applied in Taylor County and throughout the State of West Virginia (OR. 32-35; 36-59). The West Virginia Supreme Court of Appeals denied the writ, without hearing or opinion, on June 6, 1960.

On Behalf of Petitioner Crabtree

Paul H. Crabtree was indicted for forgery of a \$35 check during the November Term, 1957, of the Circuit Court of Lincoln County, West Virginia (CR. 11-12). He was arraigned on November 13, 1957, and pleaded guilty to the indictment; he was subject to a sentence of from two to ten years (CR. 3), but sentence was deferred.

On November 20, 1957, the prosecuting attorney filed a bill of information with the Court invoking the provisions

of the West Virginia Habitual Criminal law (CR. 7-8). The prosecuting attorney informed the Court, first, that on July 19, 1954, petitioner had been "arranged (sic) before the Criminal Court of Walla Walla State of Washington for the crime of Forgery in the first degree," given an indeterminate sentence of not more than 20 years in the Washington State penitentiary and, on February 18, 1957, paroled; second, that on February 18, 1947, petitioner had been tried in Cabell County, West Virginia, for uttering a forged check, found guilty and sentenced to from 1 to 5 years in the West Virginia State penitentiary.

The Court promptly granted leave to file the bill of information, cautioned petitioner as to his rights "to have a jury trial upon the issue of his identity, as to whether or not he is the same person" named in the information, inquired whether petitioner was the same person named in the information, and, according to the Court's order, was advised by petitioner

"that he is the same person duely (sic) and legally sentenced to imprisonment in the State of Washington for a term of not more than 20 years; that he is the same person duly sentenced by the Common Pleas Court of Cabell County in the West Virginia State Penitentiary at Moundsville, West Virginia, for the term and period of not less than 1 nor more than five years, all being felonies" (CR. 9-10).

The Court asked petitioner if he had anything to say why the Court should not proceed to pronounce sentence and, nothing being offered or alleged, the Court sentenced petitioner to be confined in the State penitentiary for life.

On July 1, 1960, petitioner filed with the West Virginia Supreme Court of Appeals a petition for a writ of *habeas*

corpus alleging that the charge contained in the Information filed on November 20, 1957, that petitioner

"was tried and sentenced in the Criminal Court of Walla Walla State of Washington . . . is false, in that the evidence presented with this petition affirmatively proves that there is no record of petitioner having ever (been?) convicted of any charge in the said Walla Walla Court" (CR. 3).

Attached to the petition was a letter from the Office of the Walla Walla County Clerk supporting petitioner's statement (CR. 6).

Petitioner further stated that he had been given no prior notice that he would be prosecuted as a habitual criminal; that if he had been given such notice he could have obtained proof to establish the fact that he had never been convicted in Walla Walla; that the Habitual Criminal statute, as construed by the West Virginia Supreme Court of Appeals, is unconstitutional "in that said Statute do (sic) not require or provide for pretrial notice to the accused" (CR. 3); that "said Statute are administered and applied in such a manner as to be in violation of Equal Protection and Equal Justice therefor (sic) in conflict with the Fourteenth Amendment to the Constitution of the United States." The Points and Authorities cited by petitioner supported his allegations (CR. 4-5). Attached as exhibits to the petition were the letter from the Office of the County Clerk in Walla Walla, Washington (CR. 6); the prosecuting attorney's bill of information (CR. 7-8); the commitment order of the Circuit Court of Lincoln County (CR. 9-10); the indictment for forging the \$35 check on which petitioner had been found guilty (CR. 11-12); and statistical data regarding the administration of the West Virginia Habitual Criminal statutes which are also contained in the Oyler record (CR. 13-36; OR. 37-59).

The West Virginia Supreme Court of Appeals denied the writ, without hearing or opinion, on July 11, 1960 (CR. 37).

ARGUMENT

I

Petitioners Were Deprived of Their Liberty Without Due Process of Law by the State of West Virginia in Violation of the Fourteenth Amendment Because They Were Not Given Prior Notice That the State Intended to Invoke the Habitual Criminal Statutes Against Them, Because They Were Not Told on Which Specific Prior Convictions the State Would Rely in Support of the Proceedings, and Because They Were Not Otherwise Given a Reasonable Opportunity to Prepare Their Defenses to the Charge That They Were Subject to Increased Punishment Under Those Statutes.

In his application for *habeas corpus* to the West Virginia Supreme Court of Appeals, petitioner Oyler alleged violation of the due process clause of the Fourteenth Amendment in that

"... if he had been given prior notice that the Prosecuting Attorney was going to prosecute him as an Habitual Criminal and had petitioner been given proper time to prepare a defense against the said prosecution, petitioner could have obtained and presented proof, that he was not subject to prosecution as an Habitual Criminal, since he had never before been convicted or sentenced to a penitentiary as required by Chapter 61, Article 11, Sections 18 and 19 of the Code" (OR. 32).

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"... if the petitioner had been allowed the constitutional guarantee, of pretrial notice, this entire illegal and unconstitutional proceeding could have been avoided, but since the Habitual Criminal Statutes, as construed by the West Virginia Courts do not provide for or require that the accused be given prior notice Petitioner has been forced to serve more than seven years by illegal, unlawful, and unconstitutional confinement in the West Virginia Penitentiary" (OR. 33).

"... Petitioner was not informed prior to trial that he was being prosecuted as an Habitual Criminal and (given) ample time to prepare a defense" (OR. 34).

Petitioner Crabtree likewise charged lack of procedural due process:

"Petitioner had no prior notice that he would be prosecuted as an Habitual Criminal and had petitioner been properly informed he could have obtained proof to establish the fact that he had never been Convicted in the said Walla Walla Court" (CR. 3).

The propriety of inflicting severer punishment upon old offenders than upon first offenders has long been recognized in this country and in England. They are not punished a second time for the earlier offense, but the repetition of criminal conduct is said to aggravate their guilt and justify heavier penalties when they are again convicted. These laws have generally been held constitutional. *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51 (1937); *Carlesi v. New York*, 233 U.S. 51 (1914); *McDonald v. Massachusetts*, 180 U.S. 311 (1901).

"The proceedings under the statute are for identification only. They are clearly not for the establishment

of guilt. The question of guilt is not reopened." *Graham v. West Virginia*, 224 U.S. 616, 624 (1912).

Under the West Virginia law before 1943 former convictions were alleged in the indictment. However, because of the danger that the jury might be prejudiced if given information of prior convictions, the statute was amended so that the habitual criminal procedure does not begin until after conviction. In this context, West Virginia has held, *State v. Blankenship*, 137 W. Va. 1, 69 S.E. 2d 398 (1952), that the defendant is not entitled to notice under the provisions of the statute. Whether procedural due process under the Fourteenth Amendment requires reasonable prior notice to the convicted defendant that the habitual offenders statute is being involved was not adverted to. The court was concerned solely with an assignment of error that the trial court had erred "in permitting attorneys for the State to present to the Court, without prior notice to the defendant, information of two former convictions and sentences of the defendant for an offense punishable by confinement in a penitentiary." It was held that the trial court had not erred because the applicable statute "makes no such provision for any such notice." In *Blankenship* the explicit concern was with statutory interpretation not constitutional right.²

In *Rhea v. Edwards*, 136 F. Supp. 671 (D.M.D. Tenn. 1955) the court was concerned with the larger issue. There the court held that since the Tennessee Habitual Criminal Act, as interpreted by the Tennessee Supreme Court, did

² The Court's syllabus on this point reads: "Section 19, Article 11, Chapter 61, Code, as amended, does not require that notice be given to a defendant that information of his prior convictions and sentences will be presented to the court by the prosecuting attorney; and, if the provisions of such section are substantially complied with, the absence of notice to the defendant, is not error." *Id.* at 69 S.E. 2d 398, 400, 407-8.

not require that notice before trial be given a defendant who is to be sentenced under the Act, it was violative of due process. In its opinion the District Court relied heavily on the decision of this Court in *Chandler v. Fretag*, 348 U.S. 3 (1954).³

"The fundamental requirements of 'due process' are (1) notice to the accused and (2) a fair hearing. The Act under consideration, as construed and applied, does not in this court's opinion, meet the first fundamental requirement, in that it denies the accused the right of notice of the accusation against him. The court feels that such notice is not only 'commendable' but is necessary in order to constitute due process of law under the Fourteenth Amendment." *Rhea v. Edwards*, *supra* at 682.

The decision was affirmed on appeal, *Edwards v. Rhea*, 238 F. 2d 850 (CA 6, 1956):

"The court (below) further held that the statute under authority of which appellee was confined, . . . , was offensive to the Fourteenth Amendment of the United States Constitution in permitting a defendant to be required to answer the charge of being a habitual offender without actual notice in advance of trial.

³ In *Chandler v. Fretag*, 348 U.S. 1 (1954) the Court adverted to the problem of adequate notice although it disposed of the case on the ground that petitioner had been denied an opportunity to obtain counsel on the habitual criminal accusation. "Petitioner also alleged, wholly apart from his claim of denial of counsel, that he was deprived of due process by the failure of the trial court to give him any pretrial notice of the habitual criminal accusation. We find it unnecessary to pass on this contention in view of our disposition of the case. We also note that in 1950, subsequent to petitioner's trial, the Tennessee Habitual Criminal Act was amended to require pretrial notice. Tenn. Code, 1932 (1950 Supp.), § 11863.5. *Id.* at 6, FN 4.

"The opinion of Judge Davies in which these conclusions are reached is reasoned with clarity and thoroughness For the reasons there stated, the judgment of the district court is affirmed." *Id.* at 851.

In *Johnson v. Kansas*, 284 F. 2d 344 (CA 10, 1960) the court affirmed a conviction under the Habitual Criminal Act of Kansas where it appeared that the prisoner had been notified in writing ten days in advance of sentencing that evidence of prior convictions would be offered and the court would be requested to sentence him as a habitual offender.

"The appropriateness and validity of such punishment have been long recognized, and the theory is not repugnant to the Federal Constitution. * * * Most of the states have enacted statutes which provide a more severe penalty for those who are prior offenders. The penalties which may be invoked under the statutes are extremely severe, and those so charged are entitled to the protection which the Constitution affords when the issue is to be determined. *The fundamental requisites of due process, when the statute is to be invoked, are reasonable notice and an opportunity for a full and complete hearing, with the right to the aid of counsel. Chandler v. Fretag, 348 U.S. 1; Powell v. Alabama, 287 U.S. 45, 53.*" *Id.* at 345.

Rehearing in this case was denied.

Finally, in *United States ex rel. Collins v. Claudy*, 204 F. 2d 624 (CA 3, 1953) it was held that although the Pennsylvania Habitual Criminal Act does not require that a person be formally indicted and convicted as a previous offender, in order to be sentenced under the Act, procedural due process requires that at some stage in the proceedings

the defendant be given actual notice that he is being dealt with as a second offender, and an opportunity to be heard thereon.

Three circuits (3rd, 6th and 10th) have thus held that notice and hearing on the prior convictions is required in order to satisfy the demands of the due process clause of the Fourteenth Amendment. We are aware of no circuit court opinion to the contrary.

Following *Collins v. Claudy*, the State of Pennsylvania has reached the same result. See *Pennsylvania ex rel. Dermendzin v. Myers*, 397 Pa. 607, 156 A. 2d 804 (1959).^{*}

Due process not only requires the State to notify the defendant that it proposes to invoke the habitual criminal statutes, but also to identify for the defendant the specific prior convictions on which the State will rely in support of the proceedings. Without such notice the defendant cannot prepare his defense and the right of counsel accorded him—Oyler and Crabtree, according to the orders which were entered, were both accompanied by counsel at the final hearing before commitment—is wholly frustrated.

Respondent in the instant cases takes a different view:

"The primary purpose for affording a defendant notice is to inform him of the charge against him, and to give him a reasonable time in which to prepare his defense. Such reason for notice does not exist in the instant case pertaining to the application of the

^{*}"... we are constrained, in order not to involve a constitutional question of want of due process, to construe the Habitual Criminal Act as impliedly intended to require adequate notice and bearing on the issue of recidivism before an enlarged term of imprisonment can be imposed on a second offender. Under well-established rules of construction, it is our duty to interpret a statute so as to render it constitutional if it is at all reasonable to do so." *Id.* at 807-8.

habitual criminal act. As aforesaid, the defendant is not being tried for the former offenses; he cannot thereby be found guilty or innocent of such former offenses; the convictions are there as part of his record and the heavier sentence is imposed by reason of the former convictions appearing on such record." Resp. Br. in Opposition to Ptr. Crabtree's Application for Certiorari, pp. 10-11.

Respondent is in error. The due process clause of the Fourteenth Amendment safeguards liberty without regard to the nomenclature adopted by the State to describe the proceeding in which that liberty is threatened. Respondent erroneously believes that the due process clause safeguards liberty only when the State seeks to limit it in a proceeding which the State considers a trial. It is equally available to insure the fairness of a habitual criminal accusation in which guilt or innocence on account of former offenses is not in issue but liberty is nevertheless jeopardized by reason of the fact of former offenses.

But for the habitual criminal proceeding Oyler would have been confined for a period of from 5 to 18 years (OR. 32) and Crabtree for a period of from 2 to 10 years (CR. 3). Instead, because of the verbal formula, both men are imprisoned for life and neither has thus far been permitted to bring before the courts matters of fact and matters of law which on analysis no responsible lawyer would regard as insubstantial. Oyler before had been treated as a juvenile and never before had been imprisoned in a penitentiary. Crabtree before had not been tried and sentenced in Walla Walla, Washington. More important, Crabtree had pleaded guilty to forging a \$35 check and found himself imprisoned for life. Whether Crabtree pleaded guilty in consideration of the Habitual Criminal law not being imposed (see Brown,

infra, p. 21) we do not know. But it is wholly improbable that Crabtree would have pleaded guilty to this lesser felony if he had known that the mandatory habitual criminal law would be involved against him. Crabtree was never given an opportunity to withdraw his guilty plea. Finally, prosecuting attorneys in West Virginia do not treat the State's mandatory habitual criminal statute as in fact mandatory; they do apply it in discriminatory fashion; their discrimination is purposeful.

Lack of notice prevented petitioners from asserting the limits of the State statute and defending their rights under the Fourteenth Amendment. Whatever limits there may be to the reach of the due process clause, those limits have not been reached here.

II

Petitioners Were Denied Equal Protection of the Laws and Equal Justice by the State of West Virginia in Violation of the Fourteenth Amendment Because the State's Habitual Criminal Statute Was Administered With an Unequal Hand.

In his application for *habeas corpus* to the West Virginia Supreme Court of Appeals, Oyler clearly alleged a violation of the equal protection clause of the Fourteenth Amendment

"... in that from January, 1940, to June, 1955, there were six men sentenced in the Taylor County Circuit Court who were subject to prosecution as Habitual offenders (yet), Petitioner was the only man thus sentenced during this period. It is a matter of record that the five men who were not prosecuted as Habitual Criminals during this period, all had three or more

felony convictions and sentences as adults, and Petitioner's former convictions were a result of Juvenile Court actions" (OR. 33).

"... in that 904 men who were known offenders throughout the State of West Virginia were not sentenced as required by the mandatory Statutes, Chapter 61, Article 11, Sections 18 and 19 of the Code. Equal Protection and Equal Justice was denied" (OR. 35).

Crabtree made the same point but less explicitly:

"The said Statute are administered and applied in such a manner as to be in violation of Equal Protection and Equal Justice therefor (sic) in conflict with the Fourteenth Amendment to the Constitution of the United States" (CR. 3; see also 4 and 5).

The equal protection clause not only prohibits "discriminating and partial legislation * * * in favor of particular persons as against others in like condition", *Minneapolis & St. L.R. Co. v. Beckwith*, 129 U.S. 26, 28-29 (1889), but also guards the manner in which the law is administered.

"Though the law itself may be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo v. Hopkins*, 118 U.S. 356, 373-4 (1886).

The clause is violated by withholding equal access to the courts, *Truax v. Corrigan*, 257 U.S. 312 (1921), or by

inequality of treatment in the courts, *Neal v. Delaware*, 103 U.S. 370 (1881). Erroneous performance of a statutory duty, although in violation of statute, is not without more a denial of equal protection. *Snowden v. Hughes*, 321 U.S. 1, 8 (1944). For the unlawful administration of a valid statute to constitute a violation of constitutional rights, purposeful discrimination must be shown:

"The unlawful administration by State officers of a State Statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional or purposeful discrimination*. This may appear on the face of the action taken with respect to a particular class or person, cf. *McFarland v. American Sugar Co.*, 241 U.S. 79, 86-7, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself. *Yick Wo v. Hopkins*, 118 U.S. 356, 373-4. But a discriminatory purpose is not presumed, *Tarrance v. Florida*, 188 U.S. 519, 520, there must be a showing of 'clear and intentional discrimination,' *Gunling v. Chicago*, 177 U.S. 183, 186; see *Ah Sin v. Wittman*, 198 U.S. 500, 507-8; *Bailey v. Alabama*, 219 U.S. 219, 231" *Snowden v. Hughes*, *supra*, at 8.

Petitioners are not the first to have noted the unequal application of W. Va. Habitual Criminal Statute. In 1949 a nation-wide study was published which concluded that the West Virginia law was "Nullified in practice; pleas to a lesser charge." See Tappan, *Habitual Offender Laws in the United States*, 13 Fed. Probation 28 (1949) at 31; see also Illinois Legislative Council, *Habitual Criminal Statutes*, Pub. No. 122 (November 1955). Later, the Joint

Committee on Government and Finance and the Commission on Interstate Cooperation of the West Virginia Legislature commissioned a study of the State's Habitual Criminal Law by Professor Londo H. Brown of the West Virginia University College of Law. Brown, *West Virginia Habitual Criminal Law*, 59 W. Va. Law Rev. 30 (1956). Under the caption "Severity of West Virginia's Habitual Criminal Law and Resultant Discrimination in Its Application" Brown reports that the West Virginia law is one of the most severe of its kind in the country today in that it makes mandatory upon the court to impose a life sentence in case of a third felony conviction regardless of the type or seriousness of the present and prior convictions. After illustrating the point Brown comments:

"Another result of the severity of our law is that most persons who have been convicted of three or more felonies are not sentenced to life in this state. In a report of a study of habitual criminal laws in the United States which was made in 1949 it was stated that the effect of West Virginia's law was nullified in practice (citing Tappan, *supra*). This is borne out to a large extent by a study of the commitment records of West Virginia Penitentiary made by an habitual lifer in that institution. His study showed that over the period from 1940 to 1956 eleven persons subject to be sentenced to life imprisonment under West Virginia's habitual criminal law were not so sentenced to every person who was so sentenced. The study showed that over that period only 79 persons were sentenced to life under the law while 904 who could have been sentenced to life under it were not so sentenced.

"A few spot checks of the penitentiary records showed that the maker of the study had missed several repeat

offenders in his check of the commitment records and that the discrimination was probably greater than his study indicated. I made my own study of the commitment records of West Virginia Penitentiary for the years 1937, 1938, 1947 and 1948. During these four years only twenty persons, an average of five persons per year, were sentenced to life imprisonment under the habitual criminal law, and 364 persons subject to being sentenced under that law were not so sentenced." *Id.* pp. 36, 37-38.

The study which Brown says was made by an habitual lifer in the West Virginia State Penitentiary was attached as an exhibit to petitioners' *habeas corpus* applications (OR. 36-60; CR. 13-36).

After analyzing data which he had himself gathered, leading to the conclusion that with such analysis "the discrimination becomes more obvious," Brown adds:

"In view of these figures it is easy to see why the few prisoners who have been sentenced to life imprisonment under our habitual criminal law feel that they have been discriminated against. This is one of the chief complaints against West Virginia's habitual criminal law.

"Of course, the reason the law was not imposed in many cases was due to the fact that the person plead guilty to the present charge in consideration of the law not being imposed. Bargain justice enters the picture and the record doesn't show the whole picture insofar as the part played by the habitual criminal law in our system of criminal justice is concerned." *Id.* p. 38.

That the West Virginia Habitual Criminal law is in terms and intent mandatory in its application is unquestioned. The text of the law is set forth in the Appendix to this brief. The second paragraph of Section 18 reads:

"When it is determined, as provided in section nineteen hereof, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary, the person *shall be sentenced* to be confined in the penitentiary for life."
(Emphasis added.)

The opening sentence of Section 19 reads:

"It shall be the duty of the prosecuting attorney when he has knowledge of former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary to give information thereof to the court immediately upon conviction and before sentence."

In *State ex rel. Browning v. Tucker*, 142 W. Va. 830, 98 S.E. 2d 740 (1957), the West Virginia Supreme Court of Appeals properly described the law as jurisdictional in its terms and mandatory in its application.

A companion provision to the habitual criminal statute provides a procedure whereby the warden of the West Virginia State Penitentiary may file an information of prior convictions against convicts in the penitentiary where the information was not filed by the prosecuting attorney. W. Va. Code, c. 62, Art. 8, Sec. 4 (Michie 1955); see text in Appendix.

"But this statute makes the filing of such information discretionary with the warden and a study of the records at the penitentiary shows that no such information has been filed by the warden since the

statute was made discretionary in 1951. Prior to that time the statute was mandatory, but only one or two informations were filed under it during a ten year period prior to 1951, although there were hundreds of convicts in the penitentiary during that time subject to having such information filed against them. The present warden and the immediate past warden, to both of whom I talked during this study, feel the statute imposes too great a burden upon them and the Circuit Court of Marshall County inasmuch as there are probably an average of 371 prisoners per year committed to the penitentiary who have one or more former convictions without additional sentences for that reason if the commitment records for the years 1937, 1938, 1947 and 1948 were average years." Brown, *supra*, at page 52.

Though mandatory in terms and intent it is thus evident that West Virginia's habitual criminal law is applied and administered by public authority with an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights. *Yick Wo v. Hopkins, supra*. Intentional or purposeful discrimination has also been shown under the rule of *Snowden v. Hughes, supra*, but additional data are available. Brown sent questionnaires to judges and prosecuting attorneys in West Virginia to determine whether the recipients deemed the law too severe and thought that the life sentence should be made discretionary. After analyzing the responses he states:

"Making the law discretionary might not do any more than make the present practice legal. It is hard to see where such a change would change the situation insofar as discrimination is concerned. As a practical matter the prosecuting attorneys get around the harsh-

ness of the law in many cases by just refusing to file the required information except in cases where the additional sentence seems merited. One prosecutor in a letter to me on the subject stated,

'I have ignored the mandatory provisions and used my own discretion as to when such information should be filed. It has been my policy to pick out those cases where the prior convictions were for a wilful and malicious crime of a fairly serious nature in filing informations under the Habitual Criminal Act.'

Another prosecuting attorney suggested that the law should be made discretionary so that the prosecutor's duty could be discharged rather than overlooked." Brown, *supra*, at page 40.

What standards, if any, the Taylor County Circuit Court prosecutor used in Oyler's case is not clear since for his prior convictions petitioner Oyler had been fined a total of \$150, and either placed on probation or sentenced to serve in an Industrial School. Yet he was imprisoned in a penitentiary for life.

The practical effect of official disregard of the law is no different than if discrimination is incorporated in and proclaimed by statute. *Snowden v. Hughes, supra*, at page 9. The official action of judges and prosecutors in West Virginia has created an exception to the applicability of an avowedly mandatory statute so large (over 90%) as to establish an exempt class. To this class petitioners (and others similarly situated) have been denied access without apparent reason or justification other than the purpose or prejudice which may have motivated the prosecuting attorney.

Denial of access to the privileged class for whom the application of the West Virginia statute was, without authorization, suspended is no less a denial of equal protection than that presented in *Yick Wo, supra*. In *Yick Wo* a Chinese subject had been convicted of operating a laundry in violation of a municipal ordinance which made it unlawful to engage in such business (except in a building constructed of brick or stone) without the consent of the board of supervisors. Permission had been withheld from petitioner and 200 other Chinese subjects but had been granted to eighty others to carry on the same business in similar circumstances.

In West Virginia, under the habitual criminal law, prosecuting attorneys exercise a similar dispensing power by refusing to file the required information of prior convictions. In petitioners' cases informations were filed. In 904 of 983 cases informations were not filed. All 983 were similarly situated and yet not all were treated alike. It cannot reasonably be concluded that the discriminations were other than purposeful.

In support of his contention that discrimination was unquestionably purposeful, petitioner Crabtree cites the following case which arose in the Lincoln County Circuit Court where he was himself convicted under the West Virginia habitual criminal statute:

"Alfred White, was convicted in the Lincoln County Circuit Court of West Virginia in 1957, and he had been before convicted in the same court as well as Ohio courts. White was on the TEN MOST WANTED LIST of the F.B.I. and yet he was not sentenced under the MANDATORY Act. It is difficult to believe that the said Prosecutor did not have knowledge of White's former convictions when practically the whole

NATION knew (sic) that he was a desperately wanted man" (Petitioner Crabtree's Supp. Br. in Answer to Resp. Br. in Opposition to Certiorari, p. 13).

Petitioners submit that administration of the West Virginia habitual criminal law with an unequal hand, in disregard to its mandatory nature and with purposeful discrimination constitutes a violation of the equal protection clause of the Fourteenth Amendment.

III

The West Virginia Supreme Court of Appeals Erred in Denying Petitioners' Applications for Habeas Corpus, Without Hearing or Opinion, Because the Facts Alleged in Those Petitions Constituted Probable Cause to Believe Petitioners Were Detained Without Lawful Authority.

The Supreme Court of Appeals of West Virginia denied petitioners' applications for a writ of *habeas corpus* without opinion. Petitioners were not offered a hearing nor was the State requested to file a response.

The applications alleged that petitioners were restrained of their liberty without lawful authority. They alleged facts which fairly raised the issue of whether proceedings under the habitual criminal statute, as a result of which petitioners were imprisoned for life, were void because conditions precedent to the statute's applicability were lacking, because of failure to comply with the statute's terms, and because the proceedings violated the due process and equal protection clauses of the Fourteenth Amendment.

Under the Constitution and Statutes of West Virginia *habeas corpus* is the proper procedure by which to attack

a judgment on the ground that it is void. In *Dye v. Skeen*, 135 W. Va. 90, 62 S.E. 2d 681 (1950), the Supreme Court of Appeals of West Virginia considered whether the validity of a judgment of life imprisonment, imposed under the habitual criminal statute then in force, could be inquired into and attacked in a *habeas corpus* proceeding. The court stated:

"A writ of habeas corpus is not a substitute for a writ of error or other appellate process, and does not reach irregularities in the proceedings or errors in the judgment of a court which has jurisdiction of the parties and of the subject matter in a civil or a criminal proceeding When the process or proceeding is void, however, the remedy by habeas corpus may be invoked (citations omitted)."

The allegations that the state proceedings which resulted in a deprivation of liberty denied petitioners due process of law and equal protection of the laws are allegations of illegality and not mere irregularity. Under West Virginia law this illegality may be tested directly on appeal or collaterally by *habeas corpus*.

To warrant the issuance of the writ petitioner must show "by affidavit or other evidence probable cause to believe he is detained without lawful authority." W. Va. Code, c. 53, Art. 4, Sec. 1 (Michie 1955). However, it is suggested on behalf of respondent (Res. Br. in Opposition to Ptr. Oyler's Application for Certiorari, pp. 3-5; Res. Br. in Opposition to Ptr. Crabtree's Application for Certiorari, pp. 6-8) that the petitions for the writ may have been denied because petitioners failed to "show (probable cause) by affidavit or other evidence. . . ."

By his own affidavit (OR. 31; CR. 2) each petitioner verified all the facts alleged in his petition. Respondent

suggests that the allegations by petitioner in a verified petition are insufficient under West Virginia law but cites no authority in support of this position. The rule as stated in Michie's *Jurisprudence of Virginia and West Virginia* is flatly contrary:

"A person who is in custody and applies for a habeas corpus may show by his own affidavit probable cause to believe that he is detained in custody without lawful authority. The affidavit by the applicant is sufficient to institute the proceedings, although such applicant may be a disqualified witness, as by reason of conviction of an infamous offense, etc., just as an affidavit of such person is sufficient on the application for an injunction or a continuance, etc." Michie's *Jurisprudence*, v. 9; Habeas Corpus, Sec. 20 (1950).

The authority for this rule is *DeLacy v. Antoine*, 7 Leigh (Va.) 438 (1836), decided by the Court of Appeals of Virginia under a statute containing the identical requirement that the applicant "shew, by affidavit or other evidence, probable cause to believe that he is detained in custody without lawful authority." *Revised Code of Virginia* (1819), ch. 120, Vol. 1, p. 468. The rule of *DeLacy v. Antoine*, decided while West Virginia was still part of Virginia, has never been reversed or drawn into question by the Supreme Court of Appeals of West Virginia.²

² The State of West Virginia is surely not asking this Court to say that if the document sworn to had been called an Affidavit it would have been acceptable but since it was called a Petition it cannot be regarded as an "affidavit or other evidence" even though sworn to. It cannot be supposed that West Virginia found petitioner's claim of denial of Constitutional right valid on the merits yet denied the writ because petitioner had failed to caption his document properly—and did so without giving petitioner an op-

However, notwithstanding Respondent's contentions, this Court has consistently held that facts alleged in petitioners' applications for *habeas corpus* are to be taken as true for purposes of determining whether petitioners are held pursuant to a court judgment rendered in violation of Federally protected rights, where as here the applications have been dismissed without hearing or opinion. *Reynolds v. Cochran*, — U.S. —, 5 L. ed. 2d 754 (1961); *Cash v. Culver*, 358 U.S. 633, 634 (1959); *Hawk v. Olson*, 326 U.S. 271, 273 (1945). This Court need only decide whether the allegations show probable cause to believe petitioners are detained without lawful authority.

The allegations were clearly stated by petitioners and are set forth above in the discussion of the applicability of the due process and equal protection clauses. On the basis of these allegations, petitioners contend that (1) they were denied procedural due process because the statute as construed and applied does not require that notice be given prior to the actual sentencing, (2) they were denied equal protection of the law, because the statute was unequally and unevenly administered, and (3) they were not subject to prosecution and sentencing as habitual offenders, Oyler because he had never before been confined in a penitentiary and Crabtree because the information against him contained errors which rendered the proceedings void.

portunity to correct the caption in order to safeguard his Constitutional rights.

The distinction for this purpose between a verified petition and an affidavit is one of nomenclature not substance; both documents set forth facts or other data under oath. In any event, the writ issues under West Virginia law when the probability of unlawful detention is shown "by affidavit or other evidence." The verified petition, and the accompanying data, surely satisfy the statutory requirement of "other evidence." If they do not then West Virginia casts an impossible burden on a person claiming to be unlawfully imprisoned, who is wholly without power to compel anyone to furnish affidavits in his behalf; in effect, it would deny the possibility of collateral attack on a judgment alleged to be unlawful.

The provisions of the Habitual Criminal statute are jurisdictional and mandatory. *State ex rel. Browning v. Tucker*, 142 W. Va. 830, 98 S.E. 2d 740 (1957). The full text is set forth in the Appendix; in pertinent part the statute provides:

"Section 18. When any person is convicted of an offense, and subject to confinement in the penitentiary *therefore, and it is determined as provided in Section nineteen of this article, that such person had been before convicted in the United States of a crime punishable by imprisonment in a penitentiary*, the Court shall . . .

"When it is determined, *as provided in section nineteen hereof, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary*, that person shall be sentenced to be confined in the penitentiary for life. (Emphasis added.)

"Section 19. It shall be the duty of the prosecuting attorney when he has knowledge of former *sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary*, to give information thereof to the court immediately upon conviction and before sentence. Said court shall before the expiration of the term at which such person was convicted, cause such person or prisoner to be brought before it, and upon *information filed by the prosecuting attorney setting forth the records of conviction and sentence, or convictions and sentences* as the case may be, and alleging the identity of the prisoner with the person named in each, shall require the prisoner to say whether he is the same person or not (Emphasis added.)"

A reading of Section 18 alone would seem to indicate that those convicted of offenses *punishable* by confinement in a penitentiary are subject to the act irrespective of where the sentence is executed. However, Section 19 limits the prosecutor to filing an information of prior convictions to "former sentence or sentences *to* the penitentiary of any person convicted of an offense *punishable* by confinement *in* the penitentiary. . . ." If Section 19 is a further definition of Section 18 then the result is clear that the person must not only be convicted of an offense "punishable by confinement in a penitentiary" but also that the sentence must be executed in a penitentiary. Section 19, as stated above, expressly states the prosecutor's duty is dependent on knowledge of former sentences *to* the penitentiary of any person convicted of an offense punishable by such confinement.

Moreover, Section 19 stresses that the information filed by the prosecuting attorney must set forth both the records of convictions and the sentences; the previous reference to "sentences" in Section 19 is to "sentences ²⁰⁶ to the penitentiary."⁶

⁶ Predecessor provisions of West Virginia's habitual offender laws which were before the Court in *Graham v. West Virginia*, 224 U.S. 616 (1912) read as follows:

"23. When any person is convicted of an offense and sentenced to confinement therefor in the penitentiary, and it is alleged in the indictment on which he is convicted, and admitted, or by the jury found, that he had been before sentenced in the United States to a like punishment, he shall be sentenced to be confined five years in addition to the time to which he is or would be otherwise sentenced.

"24. When any such convict shall have been twice before sentenced in the United States to confinement in a penitentiary, he shall be sentenced to be confined in the penitentiary for life." *Id.* at 622.

Under this statute there can be no question that Oyler's previous convictions would not suffice to permit increased punishment under the habitual offender procedure.

(Continued on next page)

In the instant cases Oyler was convicted of larceny (a \$1250 car), fined \$100 and placed on probation (OR. 16-18); breaking and entering and burglary (\$198.29 and \$50), fined \$50 and committed to the Pennsylvania Industrial School (OR. 19-23). On the face of the record Oyler was never sentenced to and never served in the penitentiary. Yet the trial court imposed a life sentence because:

"... said Defendant has been thrice before been convicted in the United States of crimes punishable by confinement in a penitentiary; . . . And, the life sentence aforesaid having been imposed only because it appears mandatory to do so. . . ." (OR. 28-9).

Even in Section 18 "a crime punishable by confinement in a penitentiary" is qualified by "when it is determined, as provided in section nineteen hereof." When this is combined with the narrowly defined duty of the prosecutor which depends upon knowledge of "sentences to the penitentiary of any person convicted of an offense punishable by . . .", certainly one fair reading of the statute is that there must be a conviction (of an offense punishable by confinement in a penitentiary) and a sentence to the penitentiary.

Crabtree alleged that the information against him contained error and Respondent conceded error (Res. Br. in Opposition to Certiorari, p. 5). In support of his allegation

In 1943 the law was amended to prohibit reference to previous convictions in the indictment; this was done to safeguard the interests of the prisoner and to prevent prejudice (see, *supra*, p. 12). There is no indication, however, that the State legislature in 1943 also intended to change the requirement that prior offenses, for purposes of the Act, must have been punished by confinement in a penitentiary. See *State v. Blankenship*, 137 W. Va. 1, 69 S.E. 2d 398 (1952).

Crabtree submitted a copy of a letter (CR. 6) which stated that he had no record in Walla Walla, Washington. Thus an issue of fact was raised which cast doubt upon the sufficiency of the information of former convictions. Respondent argues that to overlook Crabtree's admission that he had served time in the State of Washington penitentiary would be to give undue weight to mere form. (Crabtree had apparently been convicted in Yakima County, Washington, not in Walla Walla; the Washington State Penitentiary is located in Walla Walla. See Resp. Mem. in Opp. to Cert., p. 5.) Here, however, the provisions of the statute are jurisdictional and mandatory. To argue that error in the information is non-prejudicial is to ignore the nature of the statute invoked; that statute is highly penal and therefore must be strictly construed. Failure to comply with its terms voids the proceedings. *State v. Adams*, 143 W. Va. 601, 103 S.E. 2d 873 (1958).

Further, petitioners demonstrate that the informations were not filed as required by the statute. Section 19 provides in part:

"It shall be the duty of the prosecuting attorney when he has knowledge of former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary, to give information thereof *immediately* upon conviction and before sentence." (Emphasis added.) W. Va. Code, c. 61, Art. 11, Sec. 19 (Michie 1955).

In Crabtree's case, the information was filed 7 days after the conviction (CR. 3). This clearly does not accord with the plain meaning of the statute but apparently it does accord with the practice followed in West Virginia (See OR. 12, 13).

It would be inappropriate in the circumstances of these cases for this Court to resolve questions posed under state law beyond a determination as to whether probable cause was shown. We therefore note, in the case of Crabtree, that a key allegation in the information was wrong (as Respondent conceded—"incorrect") and that under the plain meaning of the statute the information was not filed "immediately" upon conviction. In the case of Oyler, despite the plain language of the statute, petitioner was held as a habitual criminal although he was never sentenced to a penitentiary. In fact, under West Virginia law an Industrial School is not even a penal institution although confinement is involuntary. *State v. Vest*, 136 W. Va. 80, 65 S.E. 2d 649 (1951); *Elbert v. Tucker*, 123 W. Va. 585, 15 S.E. 2d 583 (1941). This allegation alone should have sufficed to constitute probable cause for the issuance of the writ to Oyler since it was supported on the face of the record.⁷

Nor is it necessary in this context to consider further the particular questions raised under the Fourteenth

⁷ Oyler also pointed out in his petition for habeas corpus that two of the previous convictions specified in the information were "punished on the same day in the same juvenile court, . . . by commitment to the Pennsylvania Industrial School at Camp Hill" (OR. 33, 34), and that the "introduction of two . . . convictions had on the same day in the same court" violates the statute under the rule of *Dye v. Skeen*, 135 W. Va. 90, 62 S.E. 2d 681 (1950). The record supports this allegation (OR. 21 and 23). Respondent concedes the error but argues that there was a second felony conviction in the May Term, 1950. "While the two burglary convictions were obtained in February, 1951, the conviction for larceny, a felony, was had against him in the May Term, 1950". See Resp. Memo. in Opp. to Cert., p. 9.

The central point is not whether these errors are or are not harmless or whether they are errors "merely" of form or errors of substance. The point is that under the procedure followed there was no way to challenge them and perhaps other errors which are not apparent on the face of the record. The fact of error—conceded by respondent—underlines the need for a changed procedure.

Amendment by the denial of due process and equal protection beyond the observation that those questions certainly cannot be considered frivolous. See, e.g., *Johnson v. Kansas*, 284 F. 2d 344, 345 (CA 10, 1960) (fundamental requisites of due process, where a habitual offender statute is involved, include reasonable notice).

Petitioners submit that the allegations contained in their applications for the writ of *habeas corpus* charging that they are held in violation of due process and equal protection under the Fourteenth Amendment, and without lawful authority under local law, constitute such probable cause as to require a hearing and that the court below erred in denying the writs.

Conclusion

The judgments of the Supreme Court of Appeals of West Virginia denying the writ of habeas corpus should be reversed and both causes remanded to that court for further proceedings.

Respectfully submitted,

DAVID GINSBURG

Counsel for Petitioners

ANDREW F. McEVoy, JR.
of Counsel

August 25, 1961

Appendix

WEST VIRGINIA HABITUAL CRIMINAL LAW

W. Va. Code, c. 61, Art. 11, Sec. 18 (Michie 1955). *Punishment for Second or Third Offense of Felony.* When any person is convicted of an offense and is subject to confinement in a penitentiary therefor, and it is determined, as provided in section nineteen of this article, that such person had been before convicted in the United States of a crime punishable by imprisonment in a penitentiary, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, five years shall be added to the maximum term of imprisonment otherwise provided for under such sentence.

When it is determined, as provided in section nineteen hereof, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary, the person shall be sentenced to be confined in the penitentiary for life.

W. Va. Code, c. 61, Art. 11, Sec. 19 (Michie 1955). *Procedure in Trial of Persons for Second or Third Offense.* It shall be the duty of the prosecuting attorney when he has knowledge of former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary to give information thereof to the court immediately upon conviction and before sentence. Said court shall, before expiration of the term at which such person was convicted, cause such person or prisoner to be brought before it, and upon information filed by the prosecuting attorney, setting forth the records of conviction and sentences, as the case may be,

and alleging the identity of the prisoner with the person named in each, shall require the prisoner to say whether he is the same person or not. If he says he is not, or remains silent, his plea, or the fact of his silence, shall be entered of record, and a jury shall be impaneled to inquire whether the prisoner is the same person mentioned in the several records. If the jury finds that he is not the same person, he shall be sentenced upon the charge of which he was convicted as provided by law; but if they find that he is the same, or after being duly cautioned if he acknowledges in open court that he is the same person, the court shall sentence him to such further confinement as is prescribed by section eighteen of this article on a second or third conviction as the case may be.

The clerk of such court shall transmit a copy of said information to the warden of the penitentiary, together with the other papers required by the provisions of section ten, article eight, chapter sixty-two of the Code of West Virginia, one thousand nine hundred thirty-one.

Nothing herein shall be construed as repealing the provisions of section four, article eight, chapter sixty-two of the Code of West Virginia, one thousand nine hundred thirty-one, and no proceeding shall be instituted by the warden, as provided therein, if the trial court has determined the fact of former conviction or convictions as provided herein.

W. Va. Code, c. 62, Art. 8, Sec. 4 (Michie 1955). *Procedure in Sentencing Convicts to Further Confinement for Second or Third Offenses.* When a prisoner convicted of an offense and sentenced to confinement therefor in the penitentiary, is received therein, if he was before convicted in the United States of a crime punishable by imprisonment in a penitentiary and the record of his conviction does not show that he has been sentenced under

sections eighteen or nineteen, article eleven, chapter sixty-one of this Code, the warden of the penitentiary may give information thereof, to the circuit court of the County of Marshall, whether it be alleged or not in the indictment on which he was convicted that he had before been previously so convicted. If such information is given, the court shall cause the convict to be brought before it, and upon an information filed, setting forth the several records of conviction, and alleging the identity of the prisoner with the person named in each, shall require the convict named to say whether he is the same person or not. If he says he is not, or remains silent, his plea, or the fact of his silence, shall be entered of record, and a jury shall be impaneled to inquire whether the convict is the same person mentioned in the several records. If the jury finds that he is not the same person, he shall be remanded to the penitentiary; but if they find that he is the same person, or if he acknowledges in open court, after being duly cautioned, that he is the same person, the court shall sentence him to such further confinement as is prescribed by article eleven, chapter sixty-one of this Code for a second or third conviction as the case may be.

**BRIEF
FOR
RESPONDENT**

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Nos. 56 and 57

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Supreme Court of the United States

OCTOBER TERM, 1961

JAMES W. OYLER
and
PAUL H. CRABTREE,
Petitioners,

VS.

OTTO C. BOLES, Warden
West Virginia Penitentiary,
Moundsville, West Virginia;
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF APPEALS OF THE STATE OF WEST VIRGINIA

BRIEF FOR RESPONDENT

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF APPEALS OF THE STATE OF WEST VIRGINIA**

BRIEF FOR RESPONDENT

OPINION BELOW

The orders of the Supreme Court of Appeals of the State of West Virginia denying the writs of habeas corpus are set forth in the records (OR. 60; CR. 37).*

* "OR" refers to the Oyler Record;
"CR" refers to the Crabtree Record.

JURISDICTION

The orders, in both cases, granting the motion for leave to proceed in forma pauperis and granting petition for writ of certiorari were entered on February 20, 1961. The cases were also consolidated by said orders. The jurisdiction of this Court is apparently invoked under the provisions of 28 U.S.C., Section 1257(3).

ARGUMENT

I

Section 19, Article 11, Chapter 61, Code of West Virginia, as amended, does not require that notice be given to a defendant that information of his prior convictions and sentences will be presented to the Court by the Prosecuting Attorney, and this procedure does not violate the Constitutional Guaranty of due process of law because it provides to a defendant ample notice that he is being dealt with as a previous offender.

The petitioners contend that they were deprived of their liberty without due process of law by the State of West Virginia in violation of the Fourteenth Amendment, because they were not given prior notice that the State intended to invoke the habitual criminal statutes against them; because they were not told on which specific prior convictions the State would rely in support of the proceedings; and because they were not otherwise given a reasonable opportunity to prepare their defenses to the charge that they were subject to increased punishment under those statutes.

The habitual criminal laws of this and other states have heretofore been attacked on the grounds that they violate the due process and equal protection clauses of the Constitution of the United States and of the states.

These laws have generally been held constitutional, and the case of *State v. Graham*, 68 W. Va. 248, 69 S.E. 1010 (1910), in which the Supreme Court of Appeals of West Virginia held the West Virginia habitual criminal law to be constitutional, which decision was affirmed by the United States Supreme Court (*Graham v. West Virginia*, 224 U.S. 616), is one of the most cited cases on this issue. In that case the Supreme Court of Appeals of West Virginia stated, at page 253:

" * * * Since the mere imposing of the additional sentence warranted by law is not a holding to answer for crime, is not a second jeopardy or punishment for the offense itself to which the sentence rightfully belongs, and is clearly due process of law, what constitutional limitation has been placed upon the legislation in this particular? None."

On appeal, the United States Supreme Court quoted, at page 624, the West Virginia Court when it stated:

" * * * The proceedings under the statute are for identification only. They are clearly not for the establishment of guilt. The question of guilt is not reopened."

Due process of law conveys neither formal nor fixed nor narrow requirements; the real clue to the problem confronting the judiciary in the application of the due process clause is not to ask where the line is, once and for all, to be drawn but to recognize that it is for the court to draw it by gradual and empiric process of inclusion and exclusion. *Wolf v. Colorado*, 338 U.S. 25, 93 L.ed. 1782, 69 S.Ct. 1359 (1948).

In the instant cases petitioners claim they were deprived of due process of law because they were not given notice that informations would be presented alleging their prior felony convictions.

The pertinent statute, commonly referred to as the habitual criminal act, contained in the West Virginia Code, Chapter 61, Article 11, Section 19, reads, in part, as follows:

"It shall be the duty of the prosecuting attorney when he has knowledge of former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary to give information thereof to the court immediately upon conviction and before sentence. Said court shall, before expiration of the term at which such person was convicted, cause such person or prisoner to be brought before it, and upon an information filed by the prosecuting attorney, setting forth the records of conviction and sentence, or convictions and sentences, as the case may be, and alleging the identity of the prisoner with the person named in each, shall require the prisoner to say whether he is the same person or not. If he says he is not, or remains silent, his plea, or the fact of his silence, shall be entered of record, and a jury shall be impanelled to inquire whether the prisoner is the same person mentioned in the several records. If the jury finds that he is not the same person, he shall be sentenced upon the charge of which he was convicted as provided by law; but if they find that he is the same, or after being duly cautioned if he acknowledged in open court that he is the same person, the court shall sentence him to such further confinement as is prescribed by section eighteen of this article on a second or third conviction as the case may be."

Inasmuch as the procedure set forth in the above-quoted statute does not constitute a trial of the prior offenses, no notice is required before presenting a bill of information to the court. *State v. Blankenship*, 137 W. Va. 1, 69 S.E. 2d 398 (1952). The primary purpose for affording a defendant notice is to inform him of the charge against him, and to give him a reasonable time in which to prepare his defense. Such reason for notice does not exist in the instant cases pertaining to the application of the West Virginia habitual criminal act. The proceedings under the statute are for identification only. *Graham v. West Virginia*, *supra*.

Under the statute and under the facts of these cases the prisoners, upon being informed of their prior convictions, were given the opportunity to say whether or not they were the persons named in the informations. According to the order of the trial court, in both instances (OR. 28 and CP.3), the prisoners were duly cautioned of the consequences of the information, and readily admitted that they were the same persons who had been convicted of the prior offenses. Had either denied that he was the same person, he would have been afforded, under the statute, a right to a jury trial to determine that question. Under the law as stated by our Court and by this Court, it is respectfully submitted that Chapter 61, Article 11, Section 19, of the West Virginia Code is constitutional, and that the lack of notice prior to proceedings under said habitual criminal act does not constitute a violation of the constitutional guaranty of due process of law.

In discussing this matter of notice, petitioners, in their brief, rely heavily on the decisions in the cases of *Rhea v. Edwards*, 136 F. Supp. 671 (D.M.D. Tenn.

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1955), and *United States ex rel. Collins v. Claudy*, 204 F. 2d 624 (CA 3, 1953). These cases are readily distinguishable from the instant cases.

In *Rhea v. Edwards*, *supra*, the court held that since the Tennessee Habitual Criminal Act, as interpreted by the Tennessee Supreme Court, did not require that notice before trial be given a defendant who is to be sentenced under the Act, it was violative of due process.

Pertinent portions of the Tennessee Habitual Criminal Act, as then in effect, read as follows:

Section 11863.4. *Charge of being habitual criminal.*

"When an habitual criminal, as defined in section 1 of this act, is charged, by presentment or indictment, with the commission of any felonies as defined in section 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee or any other felony, conviction for which will render him infamous under section 11762 of the Code of Tennessee, or for which the maximum punishment is death, he may also be charged therein with being an habitual criminal, as defined in section 1, hereof, or may be charged only with the commission of such felony, but in either case, shall, upon conviction, be sentenced and punished as an habitual criminal, as in this act provided."

Section 11863.5. *Indictment.*—

"An indictment or presentment which charges a person who is an habitual criminal, as defined in section 1, hereof, with the commission of any felony as defined in sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee, or a felony, conviction for which will render him infamous, or for which the maximum punishment

is death, may or may not also charge that he is such habitual criminal, but in either case the felony charge shall be deemed and construed as necessarily including and charging such person with being an habitual criminal, and no such indictment or presentment shall be subject to any objection for failure to specifically include a charge that such person is an habitual criminal."

Section 11863.6. Verdict.—

"When an indictment or presentment charges an habitual criminal with a felony, as above provided, and also charges that he is an habitual criminal, as provided in section 1, it shall only be necessary for the jury, upon conviction, to find, and its verdict shall be, 'We, the jury, find the defendant guilty as charged in the indictment,' and whereupon the court shall impose sentence as provided in section 2 of this act.

"When an indictment or presentment only charges an habitual criminal with the commission of a felony which, upon conviction therefor, will render him infamous, or for which the maximum punishment is death, if the verdict of the jury shall be the general verdict, as above, sentence shall be imposed as now provided by law for the offense charged, but if the jury also find that the defendant is an habitual criminal, its verdict shall be that, 'We, the jury, find that the defendant is an habitual criminal, and guilty, as charged in the indictment,' and whereupon, sentence shall be imposed as provided in section 2 hereof."

Under the Tennessee Act the defendant was "tried" as an habitual criminal at the same time as his trial for the subsequent offense. Whether a defendant is an habitual criminal is a question for the jury. *McCum-*

mings v. State, 175 Tenn. 309, 134 S.W. 2d 151. In *McCummings v. State*, *supra*, the defendant's first knowledge that he was to be prosecuted under the Habitual Criminal Act came while the jury was being impaneled when the district attorney announced that the defendant would be tried for housebreaking, and that in addition thereto he would be tried under the Habitual Criminal Law. Such could not happen under the West Virginia statute.

In *Collins v. Claudy*, *supra*, it was held that although, as expressly stated by Pennsylvania Habitual Criminal Act, a person need not be formally indicted and convicted as a previous offender in order to be sentenced under the act to double the maximum term, in the absence of such notice in the indictment, the defendant has a right to know at time of sentence that sentence has been increased because of his prior conviction.

Collins had been indicted for the felonious breaking and entering of a store in the daytime and stealing \$29.30 from the cash register. Under the Pennsylvania statute upon which the indictment was founded the burglary charged was punishable by imprisonment for a maximum term of ten years. Collins pleaded guilty and was sentenced to imprisonment for a term of from five to twenty years. The sentence recited that it was imposed "pursuant to the Act of Assembly approved April 29, 1929." This was a reference to the Pennsylvania Habitual Criminal Act which permitted a Pennsylvania court, within its discretion, to impose upon an offender for a second conviction of certain crimes, including burglary, within a five-year period, a penalty not to exceed twice the maximum penalty normally prescribed for that crime. But neither at sentencing

nor at any earlier time, nor in the indictment itself, was it indicated to the accused in any way that the court proposed to deal or was dealing with him as a second offender.

Under West Virginia practice, the information is presented the court by the prosecuting attorney immediately upon conviction and before sentence. The court then, before the expiration of the term, gives the prisoner the opportunity to say whether or not he is the person named in the information. If he says he is not, or remains silent, a jury is impaneled to inquire whether the prisoner is the same person mentioned in the several records. If the jury finds that he is not the same person, he is sentenced upon the charge of which he was convicted; but if they find that he is the same person, or after being duly cautioned if he acknowledges in open court that he is the same person, the court shall then sentence him to such further confinement as is prescribed for a second or third conviction, as the case may be. Respondent respectfully submits that the West Virginia Procedure provides to a defendant ample notice that he is being dealt with as a second or third offender, as the case may be, and sufficient opportunity to be heard thereon.

II

A discriminatory purpose on the part of State Officers in administering State Laws fair on their face is not presumed; There must be a showing of clear and intentional discrimination.

Petitioners allege that they were denied equal protection of the laws and equal justice by the State of West Virginia in violation of the Fourteenth Amend-

ment, because the State's habitual criminal statute was administered with an unequal hand.

In support of this allegation, petitioners quote extensively from several studies made of the West Virginia habitual criminal law with emphasis on those facts that tend to indicate somewhat that the law is being applied in a discriminatory manner. Considerable mention is made of the fact that one study revealed that during a fifteen-year period, 1940-1955, only 79 persons were sentenced to life under the law, while 904 who could have been sentenced to life under it were not so sentenced. How accurate these studies are, respondent is unable to say. Respondent does say, however, that the allegations contained in the subject petitions are insufficient to show the purposeful discrimination in the administration of the West Virginia habitual criminal law essential to an invasion of the constitutional right to the equal protection of the laws.

The rule relative to discrimination on the part of state officers in administering state laws is clearly stated by this Court in the case of *Snowden v. Hughes*, 321 U.S. 1, 88 L.ed. 497 (1944), wherein it was held that:

"The unlawful administration by state officers of a state statute fair on its face resulting in its unequal application to those who are entitled to be treated alike, is not a denial of the equal protection of the law as guaranteed by the Fourteenth Amendment unless there is shown to be present in it an element of intentional or purposeful discrimination."

Moreover, it is not enough to show that a law or ordinance has not been enforced against other persons

as it is sought to be enforced against the person claiming discrimination. *Mackay Teleg. & Cable Co. v. Little Rock*, 250 U.S. 94, 63 L.ed. 863 (1918). He must show a purposeful conspiracy to deny him due protection; mere errors or irregularities in the state court proceedings are not sufficient. *Hanna v. Home Insurance Co.*, 281 F. 2d 298, 303 (1960).

Petitioners, in their brief, attempt to place themselves within the holding of this Court in the case of *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L.ed. 220 (1886). In *Yick Wo v. Hopkins*, *supra*, this Court held that:

"Though a law be fair on its face and impartial in appearance, yet, if it is administered by public authority with an evil eye and an unequal hand, so as practically to make illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

In comparing the *Yick Wo* case with the instant cases, there are several distinguishing features to be noted. First, in the *Yick Wo* case discrimination was admitted; secondly, the notorious public and municipal history of the times, indicated a purpose to drive out the Chinese laundrymen; third, the intent of the ordinance was to divide into classes; and fourth, the facts warranted the assumption that the original purpose of the ordinance was to get rid of the Chinese by putting them out of business.

Petitioners in the instant cases were sentenced under a statute that has been declared constitutional by the highest court of our land, *Graham v. West Virginia*,

supra. There was no wrongful motive involved in the enactment of this statute, as courts have long recognized the right to impose heavier penalties on habitual criminals. As it is stated in *Snowden v. Hughes, supra*, a discriminatory purpose on the part of state officers in administering state laws fair on their face is not presumed; there must be a showing of clear and intentional discrimination. This the petitioners have failed to do.

Further, the West Virginia habitual criminal statute, quoted, in part, above, states that it is the duty of the prosecuting attorney when he has knowledge of former sentence or sentences punishable by confinement in the penitentiary to give information thereof to the court. Thereafter, assuming that the procedure provided therein is followed, the application of the statute is mandatory. When this statute is not applied, there is a necessary implication that the prosecuting attorney had no knowledge of any former conviction or sentence. In the absence of proof to the contrary, there is a very strong presumption that public officers have properly discharged the duties of their office and have faithfully performed those matters with which they are charged. *Mollohan v. Cavender*, 75 W. Va. 36, 83 S.E. 78 (1914); *Consentina v. Compensation Commissioner*, 127 W. Va. 67, 31 S.E. 2d 499 (1944). The petitioners herein offer no proof that the prosecuting attorneys, in their separate cases, failed to perform their duties properly.

Respondent respectfully submits that the petitioners have failed to show the purposeful discrimination in the administration of the West Virginia habitual criminal

nal law essential to an invasion of the constitutional rights to the equal protection of the laws.

III

Under the practice in the Courts of West Virginia the Supreme Court of Appeals was justified in refusing the Writ of Habeas Corpus prayed for by the petitioners.

It is a contention of the petitioners that the Supreme Court of Appeals of West Virginia erred in denying their applications for writs of habeas corpus without hearing or opinion, because the facts alleged in their petitions constituted probable cause to believe petitioners were detained without lawful authority.

It is respectfully submitted that no mandatory duty exists which requires our State courts to grant a writ in every habeas corpus petition presented. To so hold would require a hearing of every petition presented regardless of the lack of merit or frivolous nature apparent on the face thereof. Chapter 53, Article 4, Section 1, of the West Virginia Code reads as follows:

"The writ of habeas corpus ad subjiciendum shall be granted forthwith by the supreme court of appeals, or any circuit court, or any other court given power by any particular statute to grant the same, or any judge of either court in vacation, to any person who shall, by himself or by some one in his behalf, apply for the same by petition, showing by affidavit or other evidence probable cause to believe that he is detained without lawful authority."

It is to be noted that the foregoing Code section requires the petitioner to show by affidavit or other evi-

dence probable cause to believe that he was detained without lawful authority.

In the case of *Rust v. Vanvacter*, 9 W. Va. 600 (1876), it was held that the petition is not always to be looked to exclusively to ascertain whether the detention is without lawful authority, for the language of the law is, " 'who shall apply for the same by petition, showing by affidavit or other evidence probable cause to believe that he is detained without lawful authority.' "

A mere allegation in the verified petition that the petitioner was deprived of certain constitutional rights without affidavit or other evidence establishing specific facts is insufficient to show the probable cause required by the statute. To hold that the verified petition would necessarily overcome the presumption in favor of the lower court's judgment is to take away all discretion of the Supreme Court of Appeals in these matters. Had petitioners made a strong case in their petitions and had they supported their petitions by affidavits or other evidence, as required by the statute, they possibly would be entitled to come to this Court for relief. It is respectfully submitted that this Court would not say, upon reading the petitions and knowing the requirements of the West Virginia statute, that petitioners showed to the Supreme Court of Appeals of West Virginia that there was probable cause to believe that they were unlawfully detained. Certainly the State of West Virginia is entitled to establish the manner in which one should proceed to obtain relief in its courts. *Bute v. Illinois*, 333 U.S. 640, 92 L.ed. 986 (1948).

Petitioners allege that they were not subject to prosecution and sentencing as habitual offenders, Oyler because he had never before been confined in a penitentiary, and Crabtree because the information against him contained errors which rendered the proceedings void.

Petitioner Oyler was convicted of larceny (a \$1,250.00 car), fined \$100.00 and placed on probation (OR. 16-18); burglary (\$198.29), fined \$25.00 and committed to the Pennsylvania Industrial School at Camp Hill (OR. 19-21); burglary (\$50.00), fined \$25.00 and committed to the Pennsylvania Industrial School at Camp Hill (OR. 22-23).

The first conviction listed above is for the crime of larceny, which, as described in Title 18, Section 4807, of Purdon's Pennsylvania Statutes, is a felony, punishable by imprisonment, not exceeding five (5) years. Though petitioner Oyler was fined and placed on probation, he was nonetheless convicted of a crime punishable by confinement in a penitentiary. This was no juvenile proceeding and certainly forms a basis for sentencing under the West Virginia habitual criminal statute.

The second and third convictions of Oyler were for the crime of burglary, which, as described in Title 18, Section 4901, of the aforesaid statute, is a felony, punishable by imprisonment, not exceeding twenty (20) years. On both of these felonies Oyler was sentenced to confinement at the Pennsylvania Industrial School at Camp Hill.

It is contended by Oyler that, because he was sentenced to the aforesaid Industrial School, he was sen-

tenced as a juvenile and that such conviction could not, therefore, be used as a basis for the imposition of the habitual criminal statute. First, the records reveal that Oyler was born May 28, 1930, and was, therefore, not a juvenile at the time of either of the aforementioned convictions. Further, an examination of Title 61, Section 483, Pennsylvania Statutes, Power to sentence to school, points out the fallacy of Oyler's contention. Said Section 483 reads as follows:

"Any court in this Commonwealth exercising criminal jurisdiction, in lieu of sentence now provided by law, may sentence to the Pennsylvania Industrial School at Camp Hill any male criminal, between the ages of fifteen and twenty-one years and not known to have been previously sentenced to a State penitentiary in this or any other state or country. The board of trustees of said institution shall receive and take into said school all male prisoners, of the class aforesaid, who shall be legally sentenced on conviction as aforesaid: Provided, however, That such court shall not sentence to said school any person convicted of first or second degree murder or any other crime where the penalty is fixed at life imprisonment."

Relative to the failure to specify a term of confinement, see Title 61, Section 485, of said Statutes, which reads as follows:

"The courts, in sentencing to said industrial school, shall not fix or limit the duration of sentence, but the time which any such person shall serve in said industrial school or on parole shall not in any case exceed six years or the maximum term provided by law for the crime for which the prisoner was convicted and sentenced if such

maximum be less than six years. The term of imprisonment may be terminated by the Pennsylvania Board of Parole in accordance with its rules and regulations formally adopted."

Petitioner Oyler was twice before convicted of an offense punishable by confinement in a penitentiary, and the fact that the authorities decided, under Pennsylvania law, to allow him to serve time in an institution other than a penitentiary does not remove such convictions as a proper basis for sentence under the West Virginia habitual criminal law. In *State ex rel. Johnson v. Skeen*, 140 W. Va. 896, 87 S.E. 2d 521 (1955), the court stated, at page 900, as follows:

"It is contended by relator's counsel that as the sentence imposed on relator at the January, 1950, term of the Criminal Court of McDowell County, was only for confinement in the McDowell County jail for a term of six months and a fine of fifty dollars and costs, the offense for which the relator was sentenced at the January, 1950, term of the Criminal Court of McDowell County, was not punishable as a second offense within the meaning of Section 18 of the applicable statute, for the reason that Section 19 provides that: 'It shall be the duty of the prosecuting attorney when he has knowledge of former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary to give information thereof to the court immediately upon conviction and before sentence. * * *' This position necessarily assumes that Section 19 of the statute, which provides for the 'Procedure in Trial of Persons for Second or Third Offense', supersedes or overrides the clear and express provisions of Section 18 of the statute, which deals solely with the substantive as distinguished from the adjec-

tive law governing the habitual criminal statute. In clear and in certain terms Section 18 provides that 'When it is determined, as provided in section nineteen hereof, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary, the person shall be sentenced to be confined in the penitentiary for life.' This is contrary to the evident intent of the Legislature, in the enactment of Article 11, Chapter 31, Acts of the Legislature, Regular Session, 1943, amending and reenacting Code, 61-11-18, 19. Section 18 in its very terms is clear and explicit. It governs the substantive for additional sentences for habitual criminals, and section 19 provides only for the 'Procedure in Trial of Persons for Second or Third Offense.'

"We simply hold that prior to the relator's conviction at the April, 1954, term of the Criminal Court of McDowell County for murder of the second degree, relator was twice convicted of crimes which, to use the language of Section 18 of the pertinent statute, are 'punishable by confinement in a penitentiary.'"

This contention of Oyler is without merit.

Petitioner Crabtree alleges that the information filed in connection with his case was false, inasmuch as he was never convicted of a crime in the Criminal Court of Walla Walla, Washington. In support of his allegation, the petitioner included with his petition before the Supreme Court of Appeals of West Virginia a copy of what purports to be a letter from the office of the County Clerk of Walla Walla County, Washington, wherein it is stated, "In answer to your letter of November 3, 1959, asking of any convictions or sentences you may

have received from this Court. We have checked our records and do not have record of you at all."

It is a fact that the prosecuting attorney stated in the information that this petitioner had been sentenced in the Criminal Court of Walla Walla, State of Washington, whereas a certified copy of the judgment and sentence reveals that said conviction was actually in the County of Yakima in the State of Washington. It is evident that the Prosecuting Attorney of Lincoln County, West Virginia, obtained his information about this conviction of Crabtree from the files in the office of the Criminal Identification Bureau of the Department of Public Safety of West Virginia, File No. 49466, set forth in the appendix hereto. An examination of said file reveals a conviction for first degree forgery, showing the place from which his fingerprints were submitted as Walla Walla, Washington. The Washington State Penitentiary is located at Walla Walla and is the place in which Crabtree served his term. Immediately above the aforesaid entry is a notation of first degree forgery at Yakima, Washington. It is evident that the Prosecuting Attorney of said Lincoln County erroneously construed this entry as a conviction in Walla Walla County, Washington.

No question can exist, however, as to whether Crabtree was convicted of a felony and served a sentence in the Washington State Penitentiary. Set forth in the appendix is a fully certified copy of the judgment and sentence of said Crabtree and the warrant of commitment, which have been received from the Superintendent of the Washington State Penitentiary. Furthermore, Crabtree readily acknowledged that he was the same person named in the information.

Petitioners also contend that the informations were not filed as required by statute in that they were not filed immediately upon conviction. It is pointed out that in Crabtree's case the information was filed seven days after the conviction. It is to be noted that Crabtree entered a plea of guilty to the offense for which he was charged. It is a well established practice in West Virginia that where guilty pleas are entered that a presentence investigation be conducted before sentence is pronounced. Seven days was certainly not an unreasonable time to allow for this investigation. In Oyler's case approximately nine days elapsed between the time the jury found him guilty of second degree murder and the filing of the information. Following the verdict of the jury, counsel for Oyler moved that the verdict be set aside and, according to the order of the Court (OR. 12), time was granted to assign grounds in support of said motion. Surely, it could not be expected that an information be filed prior to the conviction becoming final. This contention is wholly without merit.

In a habeas corpus proceeding the petitioner has the burden of proof to sustain his allegation. *Walker v. Johnston*, 312 U.S. 275, 85 L.ed. 830 (1941); *Hawk v. Olson*, 326 U.S. 271, 90 L.ed. 61 (1945). The statutes of the State of West Virginia merely require that the petitioner carry a reasonable amount of the burden of proof in his application for a writ of habeas corpus. Respondent respectfully submits that the petitioners failed entirely in bearing this burden, in that nothing was shown to give the Supreme Court of Appeals of West

Virginia probable cause to believe that the petitioners were improperly detained.

CONCLUSION

For the reasons hereinbefore discussed, it is respectfully submitted that the petition for writ of certiorari granted herein be dismissed and the judgment of the Supreme Court of Appeals of West Virginia affirmed.

Respectfully submitted,

C. DONALD ROBERTSON

Attorney General of West Virginia

GEORGE H. MITCHELL

Assistant Attorney General

Counsel for Respondent

Appendix

FORM NO. 36 A D. P. S.

CRIMINAL IDENTIFICATION BUREAU

DEPARTMENT OF PUBLIC SAFETY

(WEST VIRGINIA STATE POLICE)

CHARLESTON

FFC 10 9 Rt 10
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The following is the record of CIB number 49466

FBI number 2049467 ds

Fingerprints Submitted By	Name By Which Submitted	Date Arrested Or Received	Charge	Disposition
SO, Hamlin, W. Va.	Paul Crabtree #29	12-29-37	auto theft	
*NRS, Richmond, Va.	Paul Homer Crabtree #...	applicant 7-9-40		
*SO, Akron, Ohio	Paul Homer Crabtree #4713	7-18-41	susp.	
*SOS, War Dept.	Paul Homer Crabtree #39-MGB	Mechanic 12-30-42		
*SOS, War Dept.	Paul Homer Crabtree #50-KOC	C.S. helper 1-26-43		
*Allegheny Co. Det. Bu., Ident Div., Pgh., Pa.	Paul Homer Crabtree #14218	5-10-43	false pretense resisting arrest	
*PD, Torontum, Pa.	Paul Homer Crabtree #...	5-11-43	false pretense	
*Allegheny Co. Jail Pgh., Pa.	Paul Crabtree #3831	5-11-43	false pretense	5-21-43, \$50 fine and entry or 60 days Allegheny Co. Jail, eff. 5-11-43; 7-9-43, rel. by expiration
*SOS, War Dept.	Paul Homer Crabtree #103-CRS	laborer 7-12-43		
*ASF, War Dept.	Paul Crabtree #105-A&C	mach. 11-11-43		
*PD, Columbus, Ohio	Paul Homer Crabtree #BSG-6127	mechanical 12-14-43		
*PD, Columbus, Ohio	Paul Homer Crabtree #40-CWC	drop hammer 10-26-44		
PD, Huntington, W. Va.	Paul Crabtree #10746	12-26-46	forgery	1-5 yrs State pen and fine \$25. and cost

*Represents information unsupported by fingerprints in this bureau.

CRIMINAL IDENTIFICATION BUREAU**DEPARTMENT OF PUBLIC SAFETY****(WEST VIRGINIA STATE POLICE)****CHARLESTON**

-2-

The following is the record of CIB number 49466

FBI number 2049467 ds

Fingerprints Submitted By	Name By Which Submitted	Date Arrested Or Received	Charge	Disposition
SP, Moundsville, W. Va.	Paul Crabtree #36474	5-2-47	Worthless check	1-5 yrs. 5-11-50 disch. by expiration of sentence
Ohio Penitentiary Columbus, Ohio	Homer Crabtree #92221	7-23-51	Iss. chk w/o funds	1-3 yrs.
SPol, Hamlin, W. Va.	Paul Homer Crabtree #8H-5190	7-16-57	Forgery	
*St. Hwy. Patrol Columbus, Ohio	Paul Homer Crabtree #D-72-2	2-23-48	escape	rel to SPol from Moundsville, W. Va.
*Pen Columbus Ohio	Homer Crabtree #92221	11-28-51	Iss. chk w/o funds	1-3 yrs. 11-24-53 paroled rest to par W/at large 4-25-57
*SO Yakima Wash	Paul Homer Crabtree #YSO, 17395	7-3-54	inv checks	7-16-54 20 yrs at Wash SP on chg of forg 1st deg
*SP, Walla Walla Wash	Paul Homer Crabtree #25133	7-27-54	forg 1st degree	0-20 yrs
*SPol Hamlin, W. Va.	Paul Homer Crabtree #8H-5191	7-16-57	violation of parole (state of Washington)	Held for violation of parole
SP, Moundsville, W. Va.	Paul Homer Crabtree #41487	11-21-57	Hab Crim Act	Life

*Represents information unsupported by fingerprints in this bureau.

FORM NO. 30 A D. P. S.

CRIMINAL IDENTIFICATION BUREAU**DEPARTMENT OF PUBLIC SAFETY**

(WEST VIRGINIA STATE POLICE)

CHARLESTON

The following is the record of CIB number 49466
FBI number 2049467 ds

Fingerprints Submitted By	Name By Which Submitted	Date Arrested Or Received	Charge	Disposition

NOTATION FROM FBI TRANSCRIPT

#SO-4713, Paul Homer Crabtree, SO, Akron, Ohio,
6-24-44, B and L, 10-20-44. Plead guilty, Sent. susp.
3 yrs; probation, refrain from intox; obey laws; pay
costs within 60 days.

Admits:

Akron, Ohio, burg. and larc. 3 yrs. prob.
1938, auto theft, Hamblin, WV. 3 yrs. prob. disch.
1943, Charleston, WVA., forg., 10 mos. jail

#10746, PD, Huntington, W. Va., 12-26-46, forg.
3-14-47, 1-5 yrs. W. Va. SP and fined \$25. and costs.

WANTED: Homer Crabtree declared parole visl @
large. Notify SP Columbus Ohio per inf rec therefrom
7-8-54. IN CUSTODY PER PRINT MO # 25133 Wash
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*Represents information unsupported by fingerprints in this bureau.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR THE COUNTY OF YAKIMA**

No. 10088

JUDGMENT AND SENTENCE
THE STATE OF WASHINGTON, Plaintiff,

vs.

PAUL HOMER CRABTREE, Defendant.

This case coming on before the court, in open court, on this day of _____, 19____, The State of Washington being represented by the Prosecuting Attorney of Yakima County, and said defendant PAUL HOMER CRABTREE appearing in person _____ without counsel, defendant having waived counsel in open court and the plaintiff having moved for judgment and sentence of the court herein upon said defendant, said defendant is informed by the court of the nature of the information filed against him charging him with having committed the crime of FIRST DEGREE FORGERY on or about the 3rd day of July, 1954, of defendant's arraignment and plea of guilty of the offense charged in said information.

Whereupon, said defendant is asked by the court if _____ he has any legal cause to show why Judgment should not be pronounced against him to which _____ he replies that _____ he has none that _____ he has not already shown; and no sufficient cause being shown or appearing otherwise to the court, thereupon the Court renders its Judgment:

That, whereas, said defendant has been duly convicted in this court on the 16th day of July, A. D., 1954, of the crime of FIRST DEGREE FORGERY it is therefore Ordered, Adjudged and Decreed that said defendant, PAUL HOMER CRABTREE is guilty of the crime of FIRST DEGREE FORGERY and that _____ he be punished by confinement at hard labor in the Penitentiary of the State of Washington for a period of not more than twenty (20) years and to pay the costs of this prosecution as the same may be hereafter taxed, said defendant PAUL HOMER CRABTREE is hereby remanded to the custody of the Sheriff of said County to be by him detained and delivered into the custody of the proper officers for transportation to the said Penitentiary of the State of Washington, at Walla Walla, Washington.

Done and signed by the Court in open Court, in the presence of defendant, on this 19th day of July, 1954.

ROBERT J. WILLIS, Judge.

THE STATE OF WASHINGTON, }
County of Yakima } ss.

I, Agnes L. Thomas, County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Yakima, do hereby certify the foregoing to be full, true and correct copy of the Judgment and Sentence duly rendered and made, by the Hon. ROBERT J. WILLIS, Judge of said Court, on the 16th day of July, A. D., 1954, and now of record in my said office in the above entitled action.

Attest my hand and the seal of the said Superior Court this 19th day of July, A. D., 1954. Agnes L. Thomas Clerk.

By O. H. ROSENKRANZ, Deputy.

WARRENT OF COMMITMENT

The STATE OF WASHINGTON, to the Sheriff and the Superintendent and officers in charge of the Penitentiary of The State of Washington, Greetings:

Whereas PAUL HOMER CRABTREE has been duly Convicted in the Superior Court of The State of Washington for the County of Yakima of the crime of FIRST DEGREE FORGERY and judgment has been pronounced against him that he be punished by imprisonment in the Penitentiary of The State of Washington for a period of not more than twenty (20) years and pay the costs of this prosecution, all of which appears to us of record.

NOW THIS IS TO COMMAND YOU, the said Sheriff, that you detain the said PAUL HOMER CRABTREE until called for by officer or officers authorized to conduct him to the said Penitentiary AND THIS IS TO COMMAND YOU, the said Superintendent and Officers in charge of said Penitentiary to receive of and from the said officer or officers the said PAUL HOMER CRABTREE convicted and sentenced as aforesaid, and he, the said PAUL HOMER CRABTREE keep and confine at hard labor in the said Penitentiary of The State of Washington for the term of not more than twenty (20) years and until such costs are paid or secured as provided by law; and these presents are your authority for the same. Herein fail not.

Witness, Hon. ROBERT J. WILLIS, Judge of the said Superior Court and the seal thereof attached, this 19th day of July, A. D., 1954.

AGNES L. THOMAS, Clerk

By O. H. ROSENKRANZ, Deputy

PLEASE ATTACH THIS CERTIFICATE PERMANENTLY
TO ALL RECORDS

(U.S. Rev. Statutes, Sec. 906. Attestation by Legal Keeper of
Records (seal attached) of _____ to
official capacity of said Legal Keeper.)

STATE OF WASHINGTON }
COUNTY OF WALLA WALLA } ss.

I, B. J. RHAY, hereby certify: That I am the Superintendent of the Washington State Penitentiary, a penal institution of the State of Washington, situate in the County and State aforesaid; that in my legal custody as such officer are the original files and records of persons heretofore committed to said penal institution; that the (1) Photograph, (2) Fingerprint record, (3) Commitment, (4) Sentence, attached hereto are the copies of the original record of Paul Homer Crabtree a person heretofore committed to said institution and who served a term of imprisonment therein; that I have compared the foregoing and attached copies with their respective originals now on file in my office and each thereof contains, and is, a full, true and correct transcription and copy from its said original.

IN WITNESS WHEREOF, I have hereunto set my hand this
22 day of September, A. D., 1961.

B. J. RHAY, Superintendent
WASHINGTON STATE PENITENTIARY

STATE OF WASHINGTON }
COUNTY OF WALLA WALLA } ss.

I, Albert N. Bradford, Judge of the Superior Court of Walla Walla County, State of Washington; do hereby certify that B. J. RHAY is the Superintendent of the Washington State Penitentiary, State of Washington; that the signature to the foregoing certificate and attestation is the genuine signature of the said B. J. RHAY as such officer; that said B. J. RHAY, as such officer, is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand in my original character as such Judge, at the CITY of Walla Walla, County and State aforesaid, this 22nd day of September, 1961

(SEAL)

Albert N. Bradford
Judge of the Superior Court of
Walla Walla County, State of Washington

STATE OF WASHINGTON }
COUNTY OF WALLA WALLA } ss.

I, **ROBERTA LUCAS**, County Clerk of the County of Walla Walla, Washington, and Clerk of the Superior Court of the County of Walla Walla, State of Washington, do hereby certify that **Albert N. Bradford**, whose name is subscribed to the foregoing certificate of due attestation, was, at the time of signing the same, Judge of the Superior Court aforesaid, and was duly commissioned, qualified and authorized by the law to execute said certificate; and I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Superior Court of the County of Walla Walla, at my office in said County this 22nd day of September, 1961.

(SEAL)

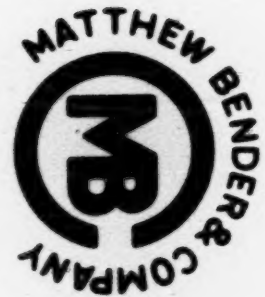
ROBERTA LUCAS
County Clerk of the County of Walla Walla,
State of Washington, and Clerk of the
Superior Court of Walla Walla County,
State of Washington.

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